

COMMITTEE SUBSTITUTE

FOR

H. B. 4390

(BY DELEGATES DOYLE, RODIGHIERO, FERRO,
FRAZIER, REYNOLDS, STORCH AND WALTERS)

(Introduced February 1, 2012;
referred to the Committee on the Judiciary)
[February 10, 2012]

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; to amend said code by adding thereto a new chapter,
designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104,
§39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109,
§39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114,
§39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119,
§39B-1-120, §39B-1-121, §39B-1-122, §39B-1-123, §39B-2-101,
§39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106,

§39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110, §39B-2-111, §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115, §39B-2-116, §39B-2-117, §39B-3-101 §39B-3-102, §39B-4-101, §39B-4-102, and §39B-4-103; and to amend and reenact §44A-3-3 of said code, all relating to repealing the Uniform Durable Power of Attorney Act; enactment of the Uniform Power of Attorney Act; providing a short title; providing definitions; setting forth the applicability of the act; providing that the power of attorney is durable; providing for execution, validity and meaning and effect of power of attorney; nominating conservator or guardian and relation of agent to court-appointed fiduciary; providing when power of attorney effective; terminating power of attorney or agent's authority; providing for coagents and successor agents and their liability; reimbursing and compensating agent, exception; providing for agent's acceptance of appointment and agent's duties; exonerating agent in power of attorney, exceptions; providing certain persons judicial relief to construe a power of attorney or review

an agent's conduct; providing for agent's liability in certain monetary amounts; providing for resignation of agent; accepting and relying upon acknowledged power of attorney and for what a request may be made before accepting the power of attorney; providing for liability for refusing to accept an acknowledged statutory form power of attorney; providing that laws applicable to financial institutions and entities supercede this act; granting specific and general authority under the power of attorney; providing for granting general authority of the agent under a power of attorney which incorporates by reference a subject matter involving real property, tangible personal property, stocks and bonds, commodities and options, financial institutions, operation of an entity or business, insurance and annuities, estates, trusts and other beneficial interests, claims and litigation, personal and family maintenance, benefits from governmental programs or civil or military service, retirement plans, taxes and gifts; providing a statutory form power of attorney form; providing

miscellaneous provisions relating to uniformity of application and construction and relating to electronic signatures in the Global and National Commerce Act; providing application of act on existing powers of attorney; and removing provision in the West Virginia Guardianship and Conservatorship Act that a conservator may not revoke or amend a durable power of attorney without approval of the court.

Be it enacted by the Legislature of West Virginia:

That §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, be repealed; that said code be amended by adding thereto a new chapter, designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104, §39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109, §39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114, §39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119, §39B-1-120, §39B-1-121, §39B-1-122 §39B-1-123, §39B-2-101, §39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106, §39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110,

§39B-2-111, §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115,
§39B-2-116, §39B-2-117, §39B-3-101, §39B-3-102, §39B-4-101,
§39B-4-102, and §39B-4-103; and that §44A-3-3 of said code be
amended and reenacted, all to read as follows:

CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§39B-1-101. Short title.

- 1 This chapter may be cited as the Uniform Power of
- 2 Attorney Act, and is cited in this chapter as “this act”.

§39B-1-102. Definitions.

- 1 In this act:
- 2 (1) “Agent” means a person granted authority to act for
- 3 a principal under a power of attorney, whether denominated
- 4 an agent, attorney-in-fact or otherwise. The term includes an
- 5 original agent, coagent, successor agent and a person to
- 6 which an agent’s authority is delegated.
- 7 (2) “Durable,” with respect to a power of attorney means
- 8 not terminated by the principal’s incapacity.

9 (3) “Electronic” means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic
11 or similar capabilities.

12 (4) “Good faith” means honesty in fact.

13 (5) “Incapacity” means inability of an individual to
14 manage property or business affairs because the individual:

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

18 (B) Is:

19 (i) Detained, including incarcerated in a penal system; or

20 (ii) Outside the United States and unable to return.

21 (6) “Person” means an individual, corporation, business
22 trust, estate, trust, partnership, limited liability company,
23 association, joint venture, public corporation, government or
24 governmental subdivision, agency, or instrumentality or any
25 other legal or commercial entity.

26 (7) “Power of attorney” means a writing or other record
27 that grants authority to an agent to act in the place of the
28 principal, whether or not the term power of attorney is used.

29 (8) “Presently exercisable general power of appointment,”
30 with respect to property or a property interest subject to a
31 power of appointment, means power exercisable at the time
32 in question to vest absolute ownership in the principal
33 individually, the principal’s estate, the principal’s creditors
34 or the creditors of the principal’s estate. The term includes
35 a power of appointment not exercisable until the occurrence
36 of a specified event, the satisfaction of an ascertainable
37 standard, or the passage of a specified period only after the
38 occurrence of the specified event, the satisfaction of the
39 ascertainable standard or the passage of the specified period.
40 The term does not include a power exercisable in a fiduciary
41 capacity or only by will.

42 (9) “Principal” means an individual who grants authority
43 to an agent in a power of attorney.

44 (10) “Property” means anything that may be the subject
45 of ownership, whether real or personal, or legal or equitable
46 or any interest or right therein.

47 (11) “Record” means information that is inscribed on a
48 tangible medium or that is stored in an electronic or other
49 medium and is retrievable in perceivable form.

50 (12) “Sign” means, with present intent to authenticate or
51 adopt a record:

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

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

55 (13) “State” means a state of the United States, the
56 District of Columbia, Puerto Rico, the United States Virgin
57 Islands or any territory or insular possession subject to the
58 jurisdiction of the United States.

59 (14) “Stocks and bonds” means stocks, bonds, mutual
60 funds and all other types of securities and financial
61 instruments, whether held directly, indirectly or in any other

62 manner. The term does not include commodity futures
63 contracts and call or put options on stocks or stock indexes.

§39B-1-103. Applicability.

1 This act applies to all powers of attorney except:

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

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

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

9 (4) A power created on a form prescribed by a
10 government or governmental subdivision, agency or
11 instrumentality for a governmental purpose.

§39B-1-104. Power of attorney is durable.

1 A power of attorney created under this act is durable
2 unless it expressly provides that it is terminated by the
3 incapacity of the principal.

§39B-1-105. Execution of power of attorney.

1 A power of attorney must be signed by the principal or in
2 the principal's conscious presence by another individual
3 directed by the principal to sign the principal's name on the
4 power of attorney. A signature on a power of attorney is
5 presumed to be genuine if the principal acknowledges the
6 signature before a notary public or other individual
7 authorized by law to take acknowledgments.

§39B-1-106. Validity of power of attorney.

1 (a) A power of attorney executed in this state on or after
2 the effective date of this act, is valid if its execution complies
3 with section one hundred five of this article.

4 (b) A power of attorney executed in this state before the
5 effective date of this act, is valid if its execution complied
6 with the law of this state as it existed at the time of
7 execution.

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

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

14 (2) The requirements for a military power of attorney
15 pursuant to 10 U.S.C. §1044b.

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

§39B-1-107. Meaning and effect of power of attorney.

1 The meaning and effect of a power of attorney is
2 determined by the law of the jurisdiction indicated in the
3 power of attorney and, in the absence of an indication of
4 jurisdiction, by the law of the jurisdiction in which the power
5 of attorney was executed.

§39B-1-108. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

1 (a) In a power of attorney, a principal may nominate a
2 conservator of the principal's estate or guardian of the
3 principal's person for consideration by the court if protective

4 proceedings for the principal's estate or person are begun
5 after the principal executes the power of attorney. In the
6 protective proceedings the court shall consider the
7 nomination in accordance with the provisions of section
8 eight, article two, chapter forty-four-a of this code.

9 (b) If, after a principal executes a power of attorney, a
10 court appoints a conservator of the principal's estate or other
11 fiduciary charged with the management of some or all of the
12 principal's property, the agent is accountable to the fiduciary
13 as well as to the principal. Unless otherwise ordered by the
14 court making the appointment, the power of attorney and the
15 agent's authority thereunder terminates upon the
16 appointment.

§39B-1-109. When power of attorney effective.

1 (a) A power of attorney is effective when executed unless
2 the principal provides in the power of attorney that it
3 becomes effective at a future date or upon the occurrence of
4 a future event or contingency.

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

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

16 (1) A physician or licensed psychologist that the
17 principal is incapacitated within the meaning of section one
18 hundred two (5)(A) of this article; or

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

23 (d) A person authorized by the principal in the power of
24 attorney to determine that the principal is incapacitated may
25 act as the principal's personal representative pursuant to the
26 Health Insurance Portability and Accountability Act, §1171
27 through §1179 of the Social Security Act, 42 U.S.C. §1320d,
28 and applicable regulations, to obtain access to the principal's
29 health-care information and communicate with the
30 principal's health-care provider.

**§39B-1-110. Termination of power of attorney or agent's
authority.**

- 1 (a) A power of attorney terminates when:
2 (1) The principal dies;
3 (2) The principal becomes incapacitated, if the power of
4 attorney is not durable;
5 (3) The principal revokes the power of attorney;
6 (4) The power of attorney provides that it terminates;
7 (5) The purpose of the power of attorney is
8 accomplished; or

9 (6) The principal revokes the agent's authority or the
10 agent dies, becomes incapacitated, or resigns, and the power
11 of attorney does not provide for another agent to act under
12 the power of attorney.

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

14 (1) The principal revokes the authority;

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

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

19 (4) The power of attorney terminates.

20 (c) Unless the power of attorney otherwise provides, an
21 agent's authority is exercisable until the authority terminates
22 pursuant to this section, notwithstanding a lapse of time since
23 the execution of the power of attorney.

24 (d) Termination of an agent's authority or of a power of
25 attorney is not effective as to the agent or another person
26 that, without actual knowledge of the termination, acts in

27 good faith under the power of attorney. An act so performed,
28 unless otherwise invalid or unenforceable, binds the principal
29 and the principal's successors in interest.

30 (e) Incapacity of the principal of a power of attorney that
31 is not durable does not revoke or terminate the power of
32 attorney as to an agent or other person who, without actual
33 knowledge of the incapacity, acts in good faith under the
34 power of attorney. An act so performed, unless otherwise
35 invalid or unenforceable, binds the principal and the
36 principal's successors in interest.

37 (f) The execution of a power of attorney does not revoke
38 a power of attorney previously executed by the principal
39 unless the subsequent power of attorney provides that the
40 previous power of attorney is revoked or that all other
41 powers of attorney are revoked.

§39B-1-111. Coagents and successor agents.

1 (a) A principal may designate two or more persons to act
2 as coagents. Unless the power of attorney otherwise

3 provides, each coagent may exercise his or her authority
4 independently and the consent of all coagents is not
5 necessary for the validity of an act or transaction.

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

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

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

18 (c) Except as otherwise provided in the power of attorney
19 and this act, an agent who does not participate in or conceal
20 a breach of fiduciary duty committed by another agent,

21 including a predecessor agent, is not liable for the actions of
22 the other agent.

23 (d) An agent who has actual knowledge of a breach or
24 imminent breach of fiduciary duty by another agent has a
25 duty to notify the principal and, if the principal is
26 incapacitated, take any action reasonably appropriate in the
27 circumstances to safeguard the principal's best interest. An
28 agent who fails to notify the principal or take action as
29 required by this article is liable for the reasonably
30 foreseeable damages that could have been avoided if the
31 agent had notified the principal or taken such action.

§39B-1-112. Reimbursement and compensation of agent.

1 Unless the power of attorney otherwise provides, an
2 agent is entitled to reimbursement of expenses reasonably
3 incurred on behalf of the principal and to compensation that
4 is reasonable under the circumstances: *Provided*, That an
5 agent who is related to the principal as an ancestor, spouse or
6 descendent is not entitled to compensation for services as

7 agent, unless the power of attorney specifically provides for
8 compensation.

§39B-1-113. Agent's acceptance.

1 Except as otherwise provided in the power of attorney, a
2 person accepts appointment as an agent under a power of
3 attorney by exercising authority or performing duties as an
4 agent or by any other assertion or conduct indicating
5 acceptance.

§39B-1-114. Agent's duties.

1 (a) Notwithstanding provisions in the power of attorney,
2 an agent who has accepted appointment shall:

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

6 (2) Act in good faith; and

7 (3) Act only within the scope of authority granted in the
8 power of attorney.

9 (b) Except as otherwise provided in the power of
10 attorney, an agent who has accepted appointment shall:

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

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

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

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

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

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

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

29 (B) The principal's foreseeable obligations and need for
30 maintenance;

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

33 (D) Eligibility for a benefit, a program or assistance
34 under a statute or regulation.

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

38 (d) An agent that acts with care, competence and
39 diligence for the best interest of the principal is not liable
40 solely because the agent also benefits from the act or has an
41 individual or conflicting interest in relation to the property or
42 affairs of the principal.

43 (e) If an agent is selected by the principal because of
44 special skills or expertise possessed by the agent or in
45 reliance on the agent's representation that the agent has
46 special skills or expertise, the special skills or expertise must

47 be considered in determining whether the agent has acted with
48 care, competence and diligence under the circumstances.

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

51 (g) An agent who exercises authority to delegate to
52 another person the authority granted by the principal or who
53 engages another person on behalf of the principal is not liable
54 for an act, error of judgment or default of that person if the
55 agent exercises care, competence and diligence in selecting
56 and monitoring the person.

57 (h) Except as otherwise provided in the power of attorney,
58 an agent is not required to disclose receipts, disbursements or
59 transactions conducted on behalf of the principal or provide an
60 accounting unless: ordered by a court or requested by the
61 principal, a guardian, a conservator, another fiduciary acting
62 for the principal, a governmental agency having authority to
63 protect the welfare of the principal or, upon the death of the
64 principal, by the personal representative or successor in

65 interest of the principal's estate. If so requested, within thirty
66 days the agent shall comply with the request or provide a
67 writing or other record substantiating why additional time is
68 needed and shall comply with the request within an additional
69 thirty days. If an agent fails or refuses to comply with the
70 provisions of this section, the court may award the principal or
71 other authorized party requesting the disclosure reimbursement
72 of reasonable attorneys fees and costs incurred.

§39B-1-115. Exoneration of agent.

1 (a) A provision in a power of attorney relieving an agent
2 of liability for breach of duty is binding on the principal and
3 the principal's successors in interest except to the extent the
4 provision:

5 (1) Relieves the agent of liability for breach of duty
6 committed dishonestly, with an improper motive or with
7 reckless indifference to the purposes of the power of attorney
8 or the best interest of the principal; or

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

§39B-1-116. Judicial relief.

1 (a) The following persons may petition a court to construe
2 a power of attorney or review the agent's conduct and grant
3 appropriate relief:

4 (1) The principal or the agent;

5 (2) A guardian, conservator or other fiduciary acting for
6 the principal;

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

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

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

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

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

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

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

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

§39B-1-117. Agent's liability.

1 (a) An agent that violates this act is liable to the principal
2 or the principal's successors in interest for the amount required
3 to:

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

6 (2) Reimburse the principal or the principal's successors
7 in interest for the attorney's fees and costs paid on the agent's
8 behalf out of the principal's assets;

9 (3) Reimburse the reasonable attorneys fees and costs
10 incurred by the principal or the principal's successors in

11 interest in pursuing rectification of the violation by the agent;
12 and
13 (4) Pay such other amounts, damages, costs or expenses as
14 the court may award.

§39B-1-118. Agent's resignation; notice.

1 (a) Unless the power of attorney provides a different
2 method for an agent's resignation, an agent may resign by
3 giving notice to the principal and, if the principal is
4 incapacitated:
5 (1) To the conservator or guardian, if one has been
6 appointed for the principal, and a coagent or successor agent;
7 or
8 (2) If there is no person described in paragraph (1), to:
9 (A) The principal's caregiver;
10 (B) Another person reasonably believed by the agent to
11 have sufficient interest in the principal's welfare; or
12 (C) A governmental agency having authority to protect the
13 welfare of the principal.

§39B-1-119. Acceptance of and reliance upon acknowledged power of attorney.

1 (a) For purposes of this section and section one hundred
2 five of this article, “acknowledged” means purportedly verified
3 before a notary public or other individual authorized to take
4 acknowledgments.

5 (b) A person who in good faith accepts an acknowledged
6 power of attorney without actual knowledge that the signature
7 is not genuine may rely upon the presumption under the
8 provisions of section one hundred five of this article that the
9 signature is genuine.

10 (c) A person who in good faith accepts an acknowledged
11 power of attorney without actual knowledge that the power of
12 attorney is void, invalid or terminated, that the purported
13 agent’s authority is void, invalid or terminated, or that the
14 agent is exceeding or improperly exercising the agent’s
15 authority may rely upon the power of attorney as if the power
16 of attorney were genuine, valid and still in effect, the agent’s
17 authority were genuine, valid and still in effect, and the agent

18 had not exceeded and had properly exercised the authority
19 except as to a conveyance of interests in real property where
20 the principal has previously filed a notice of termination of the
21 power of attorney in the office of the clerk of the county
22 commission in the county in which the property is located.

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

26 (1) An agent's certification under penalty of perjury of any
27 factual matter concerning the principal, agent or power of
28 attorney;

29 (2) An English translation of the power of attorney if the
30 power of attorney contains, in whole or in part, language other
31 than English; and

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

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

41 (f) For purposes of this section and the act, a person who
42 conducts activities through employees is without actual
43 knowledge of a fact relating to a power of attorney, a principal
44 or an agent if the employee conducting the transaction
45 involving the power of attorney is without actual knowledge
46 of the fact.

**§39B-1-120. Liability for refusal to accept acknowledged
statutory form power of attorney.**

1 (a) In this section, "statutory form power of attorney"
2 means a power of attorney substantially in the form provided
3 in this act or that meets the requirements for a military power
4 of attorney pursuant to 10 U.S.C. §1044b.

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

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

11 (2) If a person requests a certification, a translation, or an
12 opinion of counsel under section one hundred nineteen
13 subsection (d) of this article, the person shall accept the
14 statutory form power of attorney no later than five business
15 days after receipt of the certification, translation or opinion of
16 counsel; and

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

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

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

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

27 (3) The person has actual knowledge of the termination of
28 the agent's authority or of the power of attorney before
29 exercise of the power;

30 (4) A request for a certification, a translation, or an
31 opinion of counsel under section one hundred nineteen
32 subsection (d) of this article is not timely provided;

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

38 or

39 (6) The person makes, or has actual knowledge that
40 another person has made, a report to the local adult protective
41 services agency stating a good faith belief that the principal

42 may be subject to physical or financial abuse, neglect,
43 exploitation or abandonment by the agent or a person acting
44 for or with the agent.

45 (d) A person who refuses in violation of this section to
46 accept an acknowledged statutory form power of attorney is
47 subject to a court order mandating acceptance of the power of
48 attorney. The court may at its discretion award to the principal
49 or the principal's agent reasonable attorney's fees and costs
50 incurred in any action or proceeding that confirms the validity
51 of the power of attorney or mandates acceptance of the power
52 of attorney.

§39B-1-121. Principles of law and equity.

1 Unless displaced by a provision of this act, the principles
2 of law and equity supplement this act.

§39B-1-122. Laws applicable to financial institutions and entities.

1 This act does not supersede any other law applicable to
2 financial institutions or other entities, and the other law
3 controls if inconsistent with this act.

§39B-1-123. Remedies under other law.

1 The remedies under this act are not exclusive and do not
2 abrogate any right or remedy under the law of this state other
3 than this act.

ARTICLE 2. AUTHORITY.

§39B-2-101. Authority that requires specific grant; grant of general authority.

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

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

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

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

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

27 (c) Subject to subsections (a), (b), (d) and (e) of this
28 section, if a power of attorney grants to an agent authority to
29 do all acts that a principal could do, the agent has the general
30 authority described in section one hundred and four through
31 section one hundred and sixteen of this article.

32 (d) Unless the power of attorney otherwise provides, a
33 grant of authority to make a gift is subject to the provisions of
34 section on hundred and seventeen of this article.

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

38 (f) Authority granted in a power of attorney is exercisable
39 with respect to property that the principal has when the power
40 of attorney is executed or acquires later, whether or not the
41 property is located in this state and whether or not the
42 authority is exercised or the power of attorney is executed in
43 this state.

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

§39B-2-102. Incorporation of authority.

1 (a) An agent has authority described in this article if the
2 power of attorney refers to general authority with respect to the

3 descriptive term for the subjects stated in section one hundred
4 and four through section one hundred and seventeen of this
5 article or cites the section in this article in which the authority
6 is described.

7 (b) A reference in a power of attorney to general authority
8 with respect to the descriptive term for a subject in section one
9 hundred and four through section one hundred and seventeen
10 of this article or a citation to a section of section one hundred
11 and four through section one hundred and seventeen of this
12 article incorporates the entire section as if it were set out in full
13 in the power of attorney.

14 (c) A principal may modify authority incorporated by
15 reference.

§39B-2-103. Construction of authority generally.

1 Except as otherwise provided in the power of attorney, by
2 executing a power of attorney that incorporates by reference a
3 subject described in sections one hundred four through one
4 hundred seventeen of this article or that grants to an agent
5 authority to do all acts that a principal could do pursuant to the

6 provisions of section one hundred and one subsection (c) of
7 this article, a principal authorizes the agent, with respect to
8 that subject, to:

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

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

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

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

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

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

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

37 (8) Communicate with any representative or employee of
38 a government or governmental subdivision, agency or
39 instrumentality, on behalf of the principal;

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

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

§39B-2-104. Real property.

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

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

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

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

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

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

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

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

31 (C) Paying, assessing, compromising or contesting taxes
32 or assessments or applying for and receiving refunds in
33 connection with them; and

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

36 (6) Use, develop, alter, replace, remove, erect or install
37 structures or other improvements upon real property in or
38 incident to which the principal has, or claims to have, an
39 interest or right;

40 (7) Participate in a reorganization with respect to real
41 property or an entity that owns an interest in or right incident
42 to real property and receive, hold and act with respect to stocks
43 and bonds or other property received in a plan of
44 reorganization, including:

45 (A) Selling or otherwise disposing of them;

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

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

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

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

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

§39B-2-105. Tangible personal property.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to tangible personal property authorizes the agent to:
4 (1) Demand, buy, receive or accept as a gift or as security
5 for an extension of credit, or otherwise acquire or reject
6 ownership or possession of tangible personal property or an
7 interest in tangible personal property;
8 (2) Sell, exchange, convey with or without covenants,
9 representations, or warranties; quitclaim, release, surrender,
10 create a security interest in, grant options concerning, lease,

11 sublease or, otherwise dispose of tangible personal property or
12 an interest in tangible personal property;

13 (3) Grant a security interest in tangible personal property
14 or an interest in tangible personal property as security to
15 borrow money or pay, renew or extend the time of payment of
16 a debt of the principal or a debt guaranteed by the principal;

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

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

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

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

27 (C) Paying, assessing, compromising or contesting taxes
28 or assessments or applying for and receiving refunds in
29 connection with taxes or assessments;

- 30 (D) Moving the property from place to place;
31 (E) Storing the property for hire or on a gratuitous
32 bailment; and
33 (F) Using and making repairs, alterations or improvements
34 to the property; and
35 (6) Change the form of title of an interest in tangible
36 personal property.

§39B-2-106. Stocks and bonds.

- 1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to stocks and bonds authorizes the agent to:
4 (1) Buy, sell and exchange stocks and bonds;
5 (2) Establish, continue, modify or terminate an account
6 with respect to stocks and bonds;
7 (3) Pledge stocks and bonds as security to borrow, pay,
8 renew or extend the time of payment of a debt of the principal;
9 (4) Receive certificates and other evidences of ownership
10 with respect to stocks and bonds; and

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

§39B-2-107. Commodities and options.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to commodities and options authorizes the agent to:

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

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

§39B-2-108. Banks and other financial institutions.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to banks and other financial institutions authorizes the
4 agent to:

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

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

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

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

17 (5) Receive statements of account, vouchers, notices and
18 similar documents from a financial institution and act with
19 respect to them;

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

22 (7) Borrow money and pledge as security personal
23 property of the principal necessary to borrow money or pay,
24 renew or extend the time of payment of a debt of the principal
25 or a debt guaranteed by the principal;

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

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

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

39 (11) Consent to an extension of the time of payment with
40 respect to commercial paper or a financial transaction with a
41 financial institution.

§39B-2-109. Operation of entity or business.

1 (a) Subject to the terms of a document or an agreement
2 governing an entity or an entity ownership interest, and unless

3 the power of attorney otherwise provides, language in a power
4 of attorney granting general authority with respect to operation
5 of an entity or business authorizes the agent to:

6 (1) Operate, buy, sell, enlarge, reduce or terminate an
7 ownership interest;

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

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

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

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

19 (6) Initiate, participate in, submit to alternative dispute
20 resolution, settle, oppose or propose or accept a compromise

21 with respect to litigation to which the principal is a party
22 concerning stocks and bonds;

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

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

29 (B) Determine:

30 (i) The location of its operation;

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

32 (iii) The methods of manufacturing, selling,
33 merchandising, financing, accounting and advertising
34 employed in its operation;

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

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

38 (C) Change the name or form of organization under which
39 the entity or business is operated and enter into an ownership

40 agreement with other persons to take over all or part of the
41 operation of the entity or business; and

42 (D) Demand and receive money due or claimed by the
43 principal or on the principal's behalf in the operation of the
44 entity or business and control and disburse the money in the
45 operation of the entity or business;

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

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

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

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

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

56 (13) Pay, compromise, or contest taxes, assessments, fines
57 or penalties and perform any other act to protect the principal

58 from illegal or unnecessary taxation, assessments, fines or
59 penalties, with respect to an entity or business, including
60 attempts to recover, in any manner permitted by law, money
61 paid before or after the execution of the power of attorney.

§39B-2-110. Insurance and annuities.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to insurance and annuities authorizes the agent to:

4 (1) Continue, pay the premium or make a contribution on,
5 modify, exchange, rescind, release or terminate a contract
6 procured by or on behalf of the principal which insures or
7 provides an annuity to either the principal or another person,
8 whether or not the principal is a beneficiary under the contract;

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

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

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

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

20 (6) Exercise an election;

21 (7) Exercise investment powers available under a contract
22 of insurance or annuity;

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

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

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

31 (11) Collect, sell, assign, hypothecate, borrow against or
32 pledge the interest of the principal in a contract of insurance or
33 annuity;

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

36 (13) Pay, from proceeds or otherwise, compromise or
37 contest and apply for refunds in connection with, a tax or
38 assessment levied by a taxing authority with respect to a
39 contract of insurance or annuity or its proceeds or liability
40 accruing by reason of the tax or assessment.

§39B-2-111. Estates, trusts and other beneficial interests.

1 (a) In this section, “estate, trust, or other beneficial
2 interest” means a trust, probate estate, guardianship,
3 conservatorship, escrow, custodianship, or a fund from which
4 the principal is, may become, or claims to be, entitled to a
5 share or payment.

6 (b) Unless the power of attorney otherwise provides,
7 language in a power of attorney granting general authority with

8 respect to estates, trusts and other beneficial interests

9 authorizes the agent to:

10 (1) Accept, receive, receipt for, sell, assign, pledge or

11 exchange a share in or payment from an estate, trust or other

12 beneficial interest;

13 (2) Demand or obtain money or another thing of value to

14 which the principal is, may become, or claims to be, entitled

15 by reason of an estate, trust or other beneficial interest, by

16 litigation or otherwise;

17 (3) Exercise for the benefit of the principal a presently

18 exercisable general power of appointment held by the

19 principal;

20 (4) Initiate, participate in, submit to alternative dispute

21 resolution, settle, oppose or propose or accept a compromise

22 with respect to litigation to ascertain the meaning, validity or

23 effect of a deed, will, declaration of trust or other instrument

24 or transaction affecting the interest of the principal;

25 (5) Initiate, participate in, submit to alternative dispute

26 resolution, settle, oppose or propose or accept a compromise

27 with respect to litigation to remove, substitute or surcharge a
28 fiduciary;

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

31 (7) Transfer an interest of the principal in real property,
32 stocks and bonds, accounts with financial institutions or
33 securities intermediaries, insurance, annuities and other
34 property to the trustee of a revocable trust created by the
35 principal as settler; and

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

§39B-2-112. Claims and litigation.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to claims and litigation authorizes the agent to:

4 (1) Assert and maintain before a court or administrative
5 agency a claim, claim for relief, cause of action, counterclaim,

6 offset, recoupment or defense, including an action to recover
7 property or other thing of value, recover damages sustained by
8 the principal, eliminate or modify tax liability, or seek an
9 injunction, specific performance or other relief;

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

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

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

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

22 (6) Waive the issuance and service of process upon the
23 principal, accept service of process, appear for the principal,

24 designate persons upon which process directed to the principal
25 may be served, execute and file or deliver stipulations on the
26 principal's behalf, verify pleadings, seek appellate review,
27 procure and give surety and indemnity bonds, contract and pay
28 for the preparation and printing of records and briefs, receive,
29 execute and file or deliver a consent, waiver, release,
30 confession of judgment, satisfaction of judgment, notice,
31 agreement or other instrument in connection with the
32 prosecution, settlement or defense of a claim or litigation;

33 (7) Act for the principal with respect to bankruptcy or
34 insolvency, whether voluntary or involuntary, concerning the
35 principal or some other person, or with respect to a
36 reorganization, receivership or application for the appointment
37 of a receiver or trustee which affects an interest of the
38 principal in property or other thing of value;

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

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

§39B-2-113. Personal and family maintenance.

1 (a) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to personal and family maintenance authorizes the
4 agent to:

5 (1) Perform the acts necessary to maintain the customary
6 standard of living of the principal, the principal's spouse and
7 the following individuals, whether living when the power of
8 attorney is executed or later born:

9 (A) The principal's children;

10 (B) Other individuals legally entitled to be supported by
11 the principal; and

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

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

17 (3) Provide living quarters for the individuals described in
18 subsection (1) of this section by:

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

20 (B) Paying the operating costs, including interest,
21 amortization payments, repairs, improvements and taxes, for
22 premises owned by the principal or occupied by those
23 individuals;

24 (4) Provide normal domestic help, usual vacations and
25 travel expenses, and funds for shelter, clothing, food,
26 appropriate education, including postsecondary and vocational
27 education and other current living costs for the individuals
28 described in subsection (1) of this section;

29 (5) Pay expenses for necessary health care and custodial
30 care on behalf of the individuals described in subdivision (1)
31 of this section;

32 (6) Act as the principal's personal representative pursuant
33 to the Health Insurance Portability and Accountability Act,
34 §1171 through §1179 of the Social Security Act, §42 U.S.C.

35 1320d, and applicable regulations, in making decisions related
36 to the past, present or future payment for the provision of
37 health care consented to by the principal or anyone authorized
38 under the law of this state to consent to health care on behalf
39 of the principal;

40 (7) Continue any provision made by the principal for
41 automobiles or other means of transportation, including
42 registering, licensing, insuring and replacing them, for the
43 individuals described in subsection (1) of this section;

44 (8) Maintain credit and debit accounts for the convenience
45 of the individuals described in subsection (1) of this section
46 and open new accounts; and

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

51 (b) Authority with respect to personal and family
52 maintenance is neither dependent upon, nor limited by,

53 authority that an agent may or may not have with respect to
54 gifts under this article.

§39B-2-114. Benefits from governmental programs or civil or military service.

1 (a) In this section, “benefits from governmental programs
2 or civil or military service” means any benefit, program or
3 assistance provided under a federal, state or local statute or
4 regulation including Social Security, Medicare and Medicaid.

5 (b) Unless the power of attorney otherwise provides,
6 language in a power of attorney granting general authority with
7 respect to benefits from governmental programs or civil or
8 military service authorizes the agent to:

9 (1) Execute vouchers in the name of the principal for
10 allowances and reimbursements payable by the United States
11 or a foreign government or by a state or subdivision of a state
12 to the principal, including allowances and reimbursements for
13 transportation of the individuals described in section one
14 hundred and thirteen, subsection (a)(1) of this article, and for
15 shipment of their household effects;

16 (2) Take possession and order the removal and shipment
17 of property of the principal from a post, warehouse, depot,
18 dock or other place of storage or safekeeping, either
19 governmental or private, and execute and deliver a release,
20 voucher, receipt, bill of lading, shipping ticket, certificate or
21 other instrument for that purpose;

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

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

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

31 (6) Receive the financial proceeds of a claim described in
32 subdivision(4) of this section and conserve, invest, disburse or
33 use for a lawful purpose anything so received.

§39B-2-115. Retirement plans.

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

7 (1) An individual retirement account under Internal
8 Revenue Code, 26 U.S.C. §408;

9 (2) A Roth individual retirement account under Internal
10 Revenue Code, 26 U.S.C. §408A;

11 (3) A deemed individual retirement account under Internal
12 Revenue Code, 26 U.S.C. §408(q);

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

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

18 (6) A plan under Internal Revenue Code, 26 U.S.C.

19 §457(b); and

20 (7) A nonqualified deferred compensation plan under

21 Internal Revenue Code, 26 U.S.C. §409A.

22 (b) Unless the power of attorney otherwise provides,

23 language in a power of attorney granting general authority with

24 respect to retirement plans authorizes the agent to:

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

26 retirement plan and withdraw benefits from a plan;

27 (2) Make a rollover, including a direct trustee-to-trustee

28 rollover, of benefits from one retirement plan to another;

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

30 (4) Make contributions to a retirement plan;

31 (5) Exercise investment powers available under a

32 retirement plan; and

33 (6) Borrow from, sell assets to or purchase assets from a

34 retirement plan.

§39B-2-116. Taxes.

1 Unless the power of attorney otherwise provides, language
2 in a power of attorney granting general authority with respect
3 to taxes authorizes the agent to:

4 (1) Prepare, sign and file federal, state, local and foreign
5 income, gift, payroll, property, Federal Insurance
6 Contributions Act and other tax returns, claims for refunds,
7 requests for extension of time, petitions regarding tax matters
8 and any other tax-related documents, including receipts, offers,
9 waivers, consents, including consents and agreements under
10 Internal Revenue Code, 26 U.S.C. §2032A, closing
11 agreements and any power of attorney required by the Internal
12 Revenue Service or other taxing authority with respect to a tax
13 year upon which the statute of limitations has not run and the
14 following twenty-five tax years;

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

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

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

§39B-2-117. Gifts.

1 (a) In this section, a gift “for the benefit of” a person
2 includes a gift to a trust, an account under the Uniform
3 Transfers to Minors Act and a tuition savings account or
4 prepaid tuition plan as defined under Internal Revenue Code,
5 26 U.S.C. §529, as amended.

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

9 (1) Make outright to, or for the benefit of, a person, a gift
10 of any of the principal’s property, including by the exercise of
11 a presently exercisable general power of appointment held by
12 the principal, in an amount per donee not to exceed the annual
13 dollar limits of the federal gift tax exclusion under Internal

14 Revenue Code, 26 U.S.C. §2503(b), without regard to whether
15 the federal gift tax exclusion applies to the gift or if the
16 principal's spouse agrees to consent to a split gift pursuant to
17 Internal Revenue Code, 26 U.S.C. §2513, as amended, in an
18 amount per donee not to exceed twice the annual federal gift
19 tax exclusion limit; and

20 (2) Consent, pursuant to Internal Revenue Code, 26 U.S.C.
21 §2513, to the splitting of a gift made by the principal's spouse
22 in an amount per donee not to exceed the aggregate annual gift
23 tax exclusions for both spouses.

24 (c) An agent may make a gift of the principal's property
25 only as the agent determines is consistent with the principal's
26 objectives if actually known by the agent and, if unknown, as
27 the agent determines is consistent with the principal's best
28 interest based on all relevant factors, including:

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

30 (2) The principal's foreseeable obligations and need for
31 maintenance;

32 (3) Minimization of taxes, including income, estate,

33 inheritance, generation-skipping transfer and gift taxes;

34 (4) Eligibility for a benefit, a program or assistance under

35 a statute or regulation; and

36 (5) The principal's personal history of making or joining

37 in making gifts.

ARTICLE 3. STATUTORY FORMS.

§39B-3-101. Statutory form power of attorney.

1 A document substantially in the following form may be

2 used to create a statutory form power of attorney that has the

3 meaning and effect prescribed by this act.

4 **State of West Virginia**

5 **STATUTORY FORM POWER OF ATTORNEY**

6 **IMPORTANT INFORMATION**

7 This power of attorney authorizes another person (your

8 agent) to make decisions concerning your property for you (the

9 principal). Your agent will be able to make decisions and act

10 with respect to your property (including your money) whether

11 or not you are able to act for yourself. The meaning of
12 authority over subjects listed on this form is explained in the
13 Uniform Power of Attorney Act [insert citation].

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

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

20 Your agent is entitled to reasonable compensation unless
21 you state otherwise in the special instructions. This form
22 provides for designation of one agent. If you wish to name
23 more than one agent you may name a coagent in the Special
24 Instructions. Coagents are not required to act together unless
25 you include that requirement in the Special Instructions. If
26 your agent is unable or unwilling to act for you, your power of
27 attorney will end unless you have named a successor agent.
28 You may also name a second successor agent.

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

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

34 **DESIGNATION OF AGENT**

35 I _____ name the following person
36 as my agent:

37 (Name of Principal)

38 Name of Agent: _____

39 Agent's Address: _____

40 Agent's Telephone Number: _____

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

43 Name of Successor Agent: _____

44 Successor Agent's Address: _____

45 Successor Agent's Telephone Number: _____

46 If my successor agent is unable or unwilling to act for me,

47 I name as my second successor agent:

48 Name of Second Successor Agent: _____

49 Second Successor Agent's Address: _____

50 Second Successor Agent's Telephone Number: _____

51 **GRANT OF GENERAL AUTHORITY**

52 I grant my agent and any successor agent general authority

53 to act for me with respect to the following subjects as defined

54 in the Uniform Power of Attorney Act [inert citaion]:

55 (INITIAL each subject you want to include in the agent's

56 general authority. If you wish to grant general authority over

57 all of the subjects you may initial "All Preceding Subjects"

58 instead of initialing each subject.)

59 () Real Property

60 () Tangible Personal Property

61 () Stocks and Bonds

62 () Commodities and Options

63 () Banks and Other Financial Institutions

64 Operation of Entity or Business

65 Insurance and Annuities

66 Estates, Trusts, and Other Beneficial Interests

67 Claims and Litigation

68 Personal and Family Maintenance

69 Benefits from Governmental Programs or Civil or

70 Military Service

71 Retirement Plans

72 Taxes

73 All Preceding Subjects

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

75 My agent MAY NOT do any of the following specific acts

76 for me UNLESS I have INITIALED the specific authority

77 listed below:

78 (CAUTION: Granting any of the following will give your

79 agent the authority to take actions that could significantly

80 reduce your property or change how your property is

81 distributed at your death. INITIAL ONLY the specific

82 authority you WANT to give your agent.)

83 () Create, amend, revoke, or terminate an inter vivos trust

84 () Make a gift, subject to the limitations of the West

85 Virginia Uniform Power of Attorney Act and any special

86 instructions in this power of attorney

87 () Create or change rights of survivorship

88 () Create or change a beneficiary designation

89 () Authorize another person to exercise the authority

90 granted under this power of attorney

91 () Waive the principal's right to be a beneficiary of a joint

92 and survivor annuity, including a survivor benefit under

93 a retirement plan

94 () Exercise fiduciary powers that the principal has authority

95 to delegate

96 [() Disclaim or refuse an interest in property, including a

97 power of appointment]

98 **LIMITATION ON AGENT'S AUTHORITY**

99 An agent that is not my ancestor, spouse or descendant

100 MAY NOT use my property to benefit the agent or a person to

101 whom the agent owes an obligation of support unless I have
102 included that authority in the Special Instructions.

103 **SPECIAL INSTRUCTIONS (OPTIONAL)**

104 You may give special instructions on the following lines:

105 _____
106 _____
107 _____
108 _____
109 _____
110 _____
111 _____

112 **EFFECTIVE DATE**

113 This power of attorney is effective immediately unless I
114 have stated otherwise in the special instructions.

115 **NOMINATION OF [CONSERVATOR OR GUARDIAN]**
116 **(OPTIONAL)**

117 If it becomes necessary for a court to appoint a
118 [conservator or guardian] of my estate or [guardian] of my

119 person, I nominate the following person(s) for appointment:

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

121 _____

122 Nominee's Address: _____

123 Nominee's Telephone Number: _____

124 Name of Nominee for [guardian] of my person: _____

125 Nominee's Address: _____

126 Nominee's Telephone Number: _____

127 **RELIANCE ON THIS POWER OF ATTORNEY**

128 Any person, including my agent, may rely upon the

129 validity of this power of attorney or a copy of it unless that

130 person knows it has terminated or is invalid.

131 **SIGNATURE AND ACKNOWLEDGMENT**

132 _____

133 Your Signature Date

134 Your Name Printed _____

135 Your Address _____

136 Your Telephone Number _____

137 State of _____

138 [County] of _____

139 This document was acknowledged before me on _____,

140 _____ (Date)

141 by _____.

142 (Name of Principal) _____ (Seal, if any)

143 Signature of Notary

144 My commission expires: _____

145 [This document prepared by: _____]

146 **IMPORTANT INFORMATION FOR AGENT**

147 **Agent's Duties**

148 When you accept the authority granted under this power of
149 attorney, a special legal relationship is created between you
150 and the principal. This relationship imposes upon you legal
151 duties that continue until you resign or the power of attorney
152 is terminated or revoked. You must:

153 (1) Do what you know the principal reasonably expects
154 you to do with the principal's property or, if you do not know

155 the principal's expectations, act in the principal's best interest;

156 act in good faith;

157 (2) Do nothing beyond the authority granted in this power

158 of attorney; and

159 (3) Disclose your identity as an agent whenever you act for

160 the principal by writing or printing the name of the principal

161 and signing your own name as "agent" in the following

162 manner:

163 _____ by _____

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

165 Unless the special instructions in this power of attorney

166 state otherwise, you must also:

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

168 (2) Avoid conflicts that would impair your ability to act in

169 the principal's best interest;

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

171 (4) Keep a record of all receipts, disbursements and

172 transactions made on behalf of the principal;

173 (5) Cooperate with any person that has authority to make
174 health-care decisions for the principal to do what you know the
175 principal reasonably expects or, if you do not know the
176 principal's expectations, to act in the principal's best interest;
177 and attempt to preserve the principal's estate plan if you know
178 the plan and preserving the plan is consistent with the
179 principal's best interest.

180 **Termination of Agent's Authority**

181 You must stop acting on behalf of the principal if you
182 learn of any event that terminates this power of attorney or
183 your authority under this power of attorney. Events that
184 terminate a power of attorney or your authority to act under a
185 power of attorney include:

186 (1) Death of the principal;

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

189 (3) The occurrence of a termination event stated in the
190 power of attorney;

191 (4) The purpose of the power of attorney is fully
192 accomplished; or

193 (5) If you are married to the principal, a legal action is
194 filed with a court to end your marriage or for your legal
195 separation, unless the Special Instructions in this power of
196 attorney state that such an action will not terminate your
197 authority.

198 **Liability of Agent**

199 The meaning of the authority granted to you is defined in
200 the Uniform Power of Attorney Act [insert citation]. If you
201 violate the Uniform Power of Attorney Act [insert citation] or
202 act outside the authority granted, you may be liable for any
203 damages caused by your violation.

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

§39B-3-102. Agent's certification

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

3 **AGENT'S CERTIFICATION AS TO THE VALIDITY**
4 **OF POWER OF ATTORNEY AND AGENT'S**
5 **AUTHORITY**

6 State of _____

7 [County] of _____]

8 I _____ (Name of Agent), [certify]

9 under penalty of perjury that

10 _____ (Name of Principal) granted me

11 authority as an agent or successor agent in a power of attorney

12 dated _____.

13 I, further [certify] that to my knowledge:

14 (1) The Principal is alive and has not revoked the power of

15 attorney or my authority to act under the power of attorney

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

17 power of attorney have not terminated;

18 (2) If the power of attorney was drafted to become

19 effective upon the happening of an event or contingency, the

20 event or contingency has occurred;

21 (3) If I was named as a successor agent, the prior agent is

22 no longer able or willing to serve; and

23 _____

24 _____

25 _____

26 (Insert other relevant statements)

27 **SIGNATURE AND ACKNOWLEDGMENT**

28 _____

29 Agent's Signature Date

30 Agent's Name Printed _____

31 Agent's Address _____

32 Agent's Telephone Number _____

33 This document was acknowledged before me on

34 _____.

35 (Date)

36 by _____.

37 (Name of Agent)

38 _____ (Seal, if any)

39 Signature of Notary

40 My commission expires: _____

41 [This document prepared by: _____]

ARTICLE 4. MISCELLANEOUS PROVISIONS.

§39B-4-101. Uniformity of application and construction.

1 In applying and construing the provisions of this chapter,
2 consideration must be given to the need to promote uniformity
3 of the law with respect to its subject matter among the states
4 that enact it.

§39B-4-102. Relation to electronic signatures in Global and National Commerce Act.

1 This act modifies, limits and supersedes the federal
2 Electronic Signatures in Global and National Commerce
3 Act, 15 U.S.C. §7001 et seq., but does not modify, limit or
4 supersede 15 U.S.C. Section 7001(c), of that act, or authorize
5 electronic delivery of any of the notices described in 15 U.S.C.
6 Section §7003(b), of that act.

§39B-4-103. Effect on existing powers of attorney.

1 Except as otherwise provided in this act, on the effective
2 date of this act its provisions apply to:

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

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

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

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

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP
AND CONSERVATORSHIP ACT.**

**ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP
ADMINISTRATION.**

**§44A-3-3. Distributive duties and powers of the conservator of a
protected person.**

1 (a) A conservator of a protected person, without the
2 necessity of seeking prior court authorization, shall apply the

3 income and principal of the estate as needed for the protected
4 person's support, care, health, and if applicable, habilitation,
5 education or therapeutic needs. A conservator shall also apply
6 the income and principal as needed for the support of any legal
7 dependents who are unable to support themselves and who are
8 in need of support.

9 (b) A conservator, when making distributions, shall
10 exercise authority only to the extent necessitated by the
11 protected person's limitations, and shall, where feasible,
12 encourage the protected person to participate in decisions, to
13 act on his or her own behalf, and to develop or regain the
14 capacity to manage the estate and his or her financial affairs.
15 A conservator shall also consider the size of the estate, the
16 probable duration of the conservatorship, the protected
17 person's accustomed manner of living, other resources known
18 to the conservator to be available, and the recommendations of
19 the guardian.

20 (c) A conservator shall, to the extent known, consider the
21 express desires and personal values of the protected person
22 when making decisions, and shall otherwise act in the
23 protected person's best interests and exercise reasonable care,
24 diligence and prudence.

25 ~~(d) A conservator may not revoke or amend a durable~~
26 ~~power of attorney which has been executed by the protected~~
27 ~~person without the prior approval of the court.~~