

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

**House Bill 4583**

BY DELEGATE CRISS

[Introduced February 08, 2022; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §39B-1-106 of the Code of West Virginia, 1931, as amended,  
 2 relating to the validity of a power of attorney; clarifying the definition of “incapacity”; and  
 3 providing that criminal incarceration or detention outside of the United States may not be  
 4 inferred as resulting in a lack of capacity to execute a power of attorney.

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

**ARTICLE 1. GENERAL PROVISIONS.**

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

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

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

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

7 (1) The law of the jurisdiction that determines the meaning and effect of the power of  
 8 attorney pursuant to §39B-1-107 of this code; or

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

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

12 (e) It may not be inferred, from the portion of the definition of “incapacity” in §39B-1-  
 13 102(5)(9b) of this code, that an individual, who is either incarcerated in a penal system or  
 14 otherwise detained or outside of the United States and unable to return, lacks the capacity to  
 15 execute a power of attorney as a consequence the detention or inability to return.

NOTE: The purpose of this bill is to clarify the definition of “incapacity “so that criminal incarceration or detention outside of the United States may not be inferred as resulting in a lack of capacity to execute a power of attorney.

Strike-throughs indicate language that would be stricken from a heading, or the present law and underscoring indicates new language that would be added.