

House Study Bill 625 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act creating the Iowa uniform power of attorney Act and
2 providing penalties and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 144A.7, subsection 1, paragraph a, Code
2 2014, is amended to read as follows:

3 a. The attorney in fact designated to make treatment
4 decisions for the patient should such person be diagnosed as
5 suffering from a terminal condition, if the designation is in
6 writing and complies with chapter 144B ~~or section 633B.1~~.

7 Sec. 2. Section 231E.3, subsection 15, Code 2014, is amended
8 to read as follows:

9 15. "*Power of attorney*" means a durable power of attorney
10 for health care as defined in section 144B.1 or a power of
11 attorney ~~that becomes effective upon the disability of the~~
12 ~~principal as described in section 633B.1~~ executed pursuant to
13 chapter 633B.

14 Sec. 3. NEW SECTION. 633B.101 Title.

15 This chapter shall be known and may be cited as the "*Iowa*
16 *Uniform Power of Attorney Act*".

17 Sec. 4. NEW SECTION. 633B.102 Definitions.

18 1. "*Agent*" means a person granted authority to act for a
19 principal under a power of attorney, whether denominated an
20 agent, attorney in fact, or otherwise. The term includes an
21 original agent, coagent, successor agent, and a person to which
22 an agent's authority is delegated.

23 2. "*Conservator*" or "*conservatorship*" means a conservator
24 appointed or conservatorship established pursuant to sections
25 633.570 and 633.572 or a similar provision of the laws of
26 another state.

27 3. "*Durable*", with respect to a power of attorney, means not
28 terminated by the principal's incapacity.

29 4. "*Electronic*" means relating to technology having
30 electrical, digital, magnetic, wireless, optical,
31 electromagnetic, or similar capabilities.

32 5. "*Good faith*" means honesty in fact.

33 6. "*Guardian*" or "*guardianship*" means a guardian appointed
34 or a guardianship established pursuant to sections 633.556 and
35 633.560 or a similar provision of the laws of another state.

1 7. "*Incapacity*" means the inability of an individual to
2 manage property or business affairs because the individual is
3 any of the following:

4 a. An individual whose decision-making capacity is so
5 impaired that the individual is unable to make, communicate,
6 or carry out important decisions concerning the individual's
7 financial affairs.

8 b. Detained or incarcerated in a penal system.

9 c. Outside the United States and unable to return.

10 8. "*Person*" means an individual, corporation, business
11 trust, estate, trust, partnership, limited liability company,
12 association, joint venture, public corporation, government or
13 governmental subdivision, agency, or instrumentality, or any
14 other legal or commercial entity.

15 9. "*Power of attorney*" means a writing that grants authority
16 to an agent to act in the place of the principal, whether or not
17 the term "power of attorney" is used.

18 10. "*Presently exercisable general power of appointment*",
19 with respect to property or a property interest subject to
20 a power of appointment, means power exercisable at the time
21 in question to vest absolute ownership in the principal
22 individually, the principal's estate, the principal's
23 creditors, or the creditors of the principal's estate. The
24 term includes a power of appointment not exercisable until
25 the occurrence of a specified event, the satisfaction of an
26 ascertainable standard, or the passage of a specified period
27 of time only after the occurrence of the specified event, the
28 satisfaction of the ascertainable standard, or the passage of
29 the specified period of time. The term does not include a
30 power exercisable in a fiduciary capacity or only by will.

31 11. "*Principal*" means an individual who grants authority to
32 an agent in a power of attorney.

33 12. "*Property*" means anything that may be the subject of
34 ownership, whether real or personal, or legal or equitable, or
35 any interest or right therein.

1 13. "Record" means information that is inscribed on a
2 tangible medium or that is stored in an electronic or other
3 medium and is retrievable in perceivable form.

4 14. "Sign" means, with present intent to authenticate or
5 adopt a record, to do any of the following:

6 a. Execute or adopt a tangible symbol.

7 b. Attach to or logically associate with the record an
8 electronic sound, symbol, or process.

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

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

18 Sec. 5. NEW SECTION. 633B.103 **Applicability.**

19 This chapter applies to all powers of attorney except for the
20 following:

21 1. A power to the extent it is coupled with an interest
22 of the agent in the subject of the power, including but not
23 limited to a power given to or for the benefit of a creditor in
24 connection with a credit transaction.

25 2. A power to make health care decisions.

26 3. A proxy or other delegation to exercise voting rights or
27 management rights with respect to an entity.

28 4. A power created on a form prescribed by a government
29 or governmental subdivision, agency, or instrumentality for a
30 governmental purpose.

31 Sec. 6. NEW SECTION. 633B.104 **Durability of power of**
32 **attorney.**

33 A power of attorney created under this chapter is durable
34 unless the power of attorney expressly provides that it is
35 terminated by the incapacity of the principal.

1 **Sec. 7. NEW SECTION. 633B.105 Execution.**

2 A power of attorney must be signed by the principal or in
3 the principal's conscious presence by another individual, other
4 than any prospective agent, directed by the principal to sign
5 the principal's name on the power of attorney. A power of
6 attorney must be acknowledged before a notary public or other
7 individual authorized by law to take acknowledgments. An
8 agent named in the power of attorney shall not notarize the
9 principal's signature. An acknowledged signature on a power of
10 attorney is presumed to be genuine.

11 **Sec. 8. NEW SECTION. 633B.106 Validity.**

12 1. A power of attorney executed in this state on or
13 after July 1, 2014, is valid if the execution of the power of
14 attorney complies with section 633B.105.

15 2. A power of attorney executed in this state before July
16 1, 2014, is valid if the execution of the power of attorney
17 complied with the law of this state as it existed at the time
18 of execution.

19 3. A power of attorney executed other than in this state
20 is valid in this state if, when the power of attorney was
21 executed, the execution complied with any of the following:

22 *a.* The law of the jurisdiction that determines the meaning
23 and effect of the power of attorney pursuant to section
24 633B.107.

25 *b.* The requirements for a military power of attorney
26 pursuant to 10 U.S.C. §1044b, as amended.

27 4. Except as otherwise provided by law, a photocopy or
28 electronically transmitted copy of an original power of
29 attorney has the same effect as the original.

30 **Sec. 9. NEW SECTION. 633B.107 Meaning and effect.**

31 The meaning and effect of a power of attorney is determined
32 by the law of the jurisdiction indicated in the power of
33 attorney and, in the absence of an indication of jurisdiction,
34 by the law of the jurisdiction in which the power of attorney
35 was executed.

1 Sec. 10. NEW SECTION. **633B.108** **Nomination of conservator or**
2 **guardian — relation of agent to court-appointed fiduciary.**

3 1. Under a power of attorney, a principal may nominate
4 a conservator of the principal's estate or guardian of
5 the principal's person for consideration by the court if
6 proceedings for the principal's estate or person are begun
7 after the principal executes the power of attorney. Except
8 for good cause shown or disqualification, the court shall make
9 its appointment in accordance with the principal's most recent
10 nomination. This section does not prohibit an individual
11 from executing a petition for the voluntary appointment of a
12 guardian or conservator on a standby basis pursuant to sections
13 633.560 and 633.591.

14 2. If, after a principal executes a power of attorney,
15 a court appoints a conservator of the principal's estate or
16 other fiduciary charged with the management of some or all of
17 the principal's property, the power of attorney is suspended
18 unless the power of attorney provides otherwise or unless the
19 court appointing the conservator decides the power of attorney
20 should continue. If the power of attorney continues, the agent
21 is accountable to the fiduciary as well as to the principal.
22 The power of attorney shall be reinstated upon termination of
23 the conservatorship as a result of the principal regaining
24 capacity.

25 Sec. 11. NEW SECTION. **633B.109** **When power of attorney**
26 **effective.**

27 1. A power of attorney is effective when executed unless
28 the principal provides in the power of attorney that it becomes
29 effective at a future date or upon the occurrence of a future
30 event or contingency.

31 2. If a power of attorney becomes effective upon the
32 occurrence of a future event or contingency, the principal,
33 in the power of attorney, may authorize one or more persons
34 to determine in a writing that the event or contingency has
35 occurred.

1 3. If a power of attorney becomes effective upon the
2 principal's incapacity and the principal has not authorized
3 a person to determine whether the principal is incapacitated
4 or the person authorized is unable or unwilling to make the
5 determination, the power of attorney becomes effective upon
6 a determination in a writing by the occurrence of any of the
7 following:

8 a. A licensed physician or licensed psychologist determines
9 that the principal is incapacitated.

10 b. A judge, or an appropriate governmental official
11 determines that the principal is incapacitated.

12 4. A person authorized by the principal in the power of
13 attorney to determine that the principal is incapacitated may
14 act as the principal's personal representative pursuant to the
15 federal Health Insurance Portability and Accountability Act of
16 1996, Pub. L. No. 104-191, including amendments thereto and
17 regulations promulgated thereunder, to obtain access to the
18 principal's health care information and to communicate with the
19 principal's health care provider.

20 Sec. 12. NEW SECTION. 633B.110 Termination — power of
21 attorney or agent authority.

22 1. A power of attorney terminates when any of the following
23 occur:

24 a. The principal dies.

25 b. The principal becomes incapacitated, if the power of
26 attorney is not durable.

27 c. The principal revokes the power of attorney.

28 d. The power of attorney provides that it terminates.

29 e. The purpose of the power of attorney is accomplished.

30 f. The principal revokes the agent's authority or the agent
31 dies, becomes incapacitated, or resigns, and the power of
32 attorney does not provide for another agent to act under the
33 power of attorney.

34 2. An agent's authority terminates when any of the following
35 occur:

1 a. The principal revokes the authority.

2 b. The agent dies, becomes incapacitated, or resigns.

3 c. An action is filed for the dissolution or annulment
4 of the agent's marriage to the principal or for their legal
5 separation, unless the power of attorney otherwise provides.

6 d. The power of attorney terminates.

7 3. Unless the power of attorney otherwise provides, an
8 agent's authority is exercisable until the agent's authority
9 terminates under subsection 2, notwithstanding a lapse of time
10 since the execution of the power of attorney.

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

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

24 6. Except as provided in section 633B.103, the execution of
25 a general or plenary power of attorney revokes all general or
26 plenary powers of attorney previously executed in this state by
27 the principal, but does not revoke a power of attorney limited
28 to a specific and identifiable action or transaction, which
29 action or transaction is still capable of performance but has
30 not yet been fully accomplished by the agent.

31 **Sec. 13. NEW SECTION. 633B.111 Coagents and successor**
32 **agents.**

33 1. A principal may designate two or more persons to act as
34 coagents. Unless the power of attorney otherwise provides, all
35 of the following apply to actions of coagents:

1 *a.* A power held by coagents shall be exercised by majority
2 action.

3 *b.* If impasse occurs due to the failure to reach a majority
4 decision, any agent may petition the court to decide the issue,
5 or a majority of the agents may consent to an alternative form
6 of dispute resolution.

7 *c.* If one or more agents resigns or becomes unable to act,
8 the remaining coagents may act.

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

16 *a.* Has the same authority as that granted to the original
17 agent.

18 *b.* Shall not act until all predecessor agents have resigned,
19 died, become incapacitated, are no longer qualified to serve,
20 or have declined to serve.

21 3. Except as otherwise provided in the power of attorney
22 and subsection 4, an agent that does not participate in or
23 conceal a breach of fiduciary duty committed by another agent,
24 including a predecessor agent, is not liable for the actions
25 of the other agent.

26 4. An agent with actual knowledge of a breach or imminent
27 breach of fiduciary duty by another agent shall notify the
28 principal and, if the principal is incapacitated, take any
29 action reasonably appropriate in the circumstances to safeguard
30 the principal's best interest. An agent that fails to notify
31 the principal or take action as required by this subsection is
32 liable for the reasonably foreseeable damages that could have
33 been avoided if the agent had notified the principal or taken
34 such action.

35 Sec. 14. NEW SECTION. **633B.112 Reimbursement and**

1 **compensation of agent.**

2 Unless the power of attorney otherwise provides, an
3 agent who is an individual is entitled to reimbursement of
4 expenses reasonably incurred on behalf of the principal but
5 not to compensation. If a power of attorney does provide
6 for compensation or if the agent is a bank or trust company
7 authorized to administer trusts in Iowa, the compensation must
8 be reasonable under the circumstances.

9 Sec. 15. NEW SECTION. 633B.113 **Agent's acceptance.**

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

15 Sec. 16. NEW SECTION. 633B.114 **Agent's duties.**

16 1. Notwithstanding provisions in the power of attorney, an
17 agent that has accepted appointment shall act in conformity
18 with all of the following:

19 *a.* In accordance with the principal's reasonable
20 expectations to the extent actually known by the agent and
21 otherwise in the principal's best interest.

22 *b.* In good faith.

23 *c.* Only within the scope of authority granted in the power
24 of attorney.

25 2. Except as otherwise provided in the power of attorney,
26 an agent that has accepted appointment shall do all of the
27 following:

28 *a.* Act loyally for the principal's benefit.

29 *b.* Act so as not to create a conflict of interest that
30 impairs the agent's ability to act impartially in the
31 principal's best interest.

32 *c.* Act with the care, competence, and diligence ordinarily
33 exercised by agents in similar circumstances.

34 *d.* Keep a record of all receipts, disbursements, and
35 transactions made on behalf of the principal.

1 e. Cooperate with a person that has authority to make health
2 care decisions for the principal to carry out the principal's
3 reasonable expectations to the extent actually known by the
4 agent and, otherwise, act in the principal's best interest.

5 f. Attempt to preserve the principal's estate plan, to the
6 extent actually known by the agent, if preserving the plan is
7 consistent with the principal's best interest based upon all
8 relevant factors, including all of the following:

9 (1) The value and nature of the principal's property.

10 (2) The principal's foreseeable obligations and need for
11 maintenance.

12 (3) Minimization of the principal's taxes, including
13 income, estate, inheritance, generation-skipping transfer, and
14 gift taxes.

15 (4) The principal's eligibility for a benefit, a program, or
16 assistance under a statute or regulation or contract.

17 3. An agent that acts in good faith is not liable to any
18 beneficiary under the principal's estate plan for failure to
19 preserve the plan.

20 4. An agent that acts with care, competence, and diligence
21 for the best interest of the principal is not liable solely
22 because the agent also benefits from the act or has an
23 individual or conflicting interest in relation to the property
24 or affairs of the principal.

25 5. If an agent is selected by the principal because of
26 special skills or expertise possessed by the agent or in
27 reliance on the agent's representation that the agent has
28 special skills or expertise, the special skills or expertise
29 shall be considered in determining whether the agent has acted
30 with care, competence, and diligence under the circumstances.

31 6. Absent a breach of duty to the principal, an agent is not
32 liable if the value of the principal's property declines.

33 7. An agent that exercises authority to delegate to another
34 person the authority granted by the principal or that engages
35 another person on behalf of the principal is not liable for an

1 act, error of judgment, or default of that person if the agent
2 exercises care, competence, and diligence in selecting and
3 monitoring the person.

4 8. Except as otherwise provided in the power of attorney,
5 an agent is not required to disclose receipts, disbursements,
6 or transactions conducted on behalf of the principal
7 unless ordered by a court or requested by the principal, a
8 conservator, another fiduciary acting for the principal, a
9 governmental agency having authority to protect the welfare
10 of the principal, or, upon the death of the principal, by
11 the personal representative or a successor in interest of
12 the principal's estate. If an agent receives a request
13 to disclose such information, the agent shall comply with
14 the request within thirty days of the request or provide a
15 writing substantiating why additional time is necessary. Such
16 additional time shall not exceed thirty days.

17 Sec. 17. NEW SECTION. 633B.115 Exoneration of agent.

18 A provision in a power of attorney relieving an agent of
19 liability for breach of duty is binding on the principal and
20 the principal's successors in interest except to the extent the
21 provision does any of the following:

22 1. Relieves the agent of liability for a breach of duty
23 committed in bad faith, with an improper motive, or with
24 reckless indifference to the purposes of the power of attorney
25 or the best interest of the principal.

26 2. Was included in the power of attorney as a result of
27 an abuse of a confidential or fiduciary relationship with the
28 principal.

29 Sec. 18. NEW SECTION. 633B.116 Judicial relief.

30 1. The following persons may petition a court to construe a
31 power of attorney or to review an agent's conduct:

32 a. The principal or the agent.

33 b. A guardian, conservator, or other fiduciary acting for
34 the principal.

35 c. A person authorized to make health care decisions for the

1 principal.

2 *d.* The principal's spouse, parent, or descendant or an
3 individual who would qualify as a presumptive heir of the
4 principal.

5 *e.* A person named as a beneficiary to receive any property,
6 benefit, or contractual right upon the principal's death or as
7 a beneficiary of a trust created by or for the principal that
8 has a financial interest in the principal's estate.

9 *f.* A governmental agency having regulatory authority to
10 protect the welfare of the principal.

11 *g.* The principal's caregiver or another person that
12 demonstrates sufficient interest in the principal's welfare.

13 *h.* A person asked to accept the power of attorney.

14 *i.* A person designated by the principal in the power of
15 attorney.

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

20 3. The court may award reasonable attorney fees and costs to
21 the prevailing party in a proceeding under this section.

22 Sec. 19. NEW SECTION. 633B.117 **Agent's liability.**

23 An agent that violates this chapter is liable to the
24 principal or the principal's successors in interest for the
25 amount required to do both of the following:

26 1. Restore the value of the principal's property to what it
27 would have been had the violation not occurred.

28 2. Reimburse the principal or the principal's successors
29 in interest for attorney fees and costs paid on the agent's
30 behalf.

31 Sec. 20. NEW SECTION. 633B.118 **Agent's resignation —**
32 **notice.**

33 Unless the power of attorney provides for a different method
34 for an agent's resignation, an agent may resign by giving
35 notice to the principal and, if the principal is incapacitated,

1 to any of the following:

2 1. The conservator or guardian, if a conservator or guardian
3 has been appointed for the principal, and any coagent or
4 successor agent.

5 2. If there is no conservator, guardian, or coagent or
6 successor agent, the agent may give notice to any of the
7 following:

8 a. The principal's caregiver.

9 b. Any other person reasonably believed by the agent to have
10 sufficient interest in the principal's welfare.

11 c. A governmental agency having regulatory authority to
12 protect the welfare of the principal.

13 Sec. 21. NEW SECTION. 633B.119 **Acknowledged power of**
14 **attorney — acceptance and reliance.**

15 1. For purposes of this section and section 633B.120,
16 "*acknowledged*" means purportedly verified before a notary public
17 or other individual authorized by law to take acknowledgments.

18 2. A person that in good faith accepts an acknowledged power
19 of attorney without actual knowledge that the signature is not
20 genuine may rely upon the presumption under section 633B.105
21 that the signature is genuine.

22 3. A person that in good faith accepts an acknowledged power
23 of attorney without actual knowledge that the power of attorney
24 is void, invalid, or terminated, that the purported agent's
25 authority is void, invalid, or terminated, or that the agent is
26 exceeding or improperly exercising the agent's authority may
27 rely upon the power of attorney as if the power of attorney
28 were genuine, valid, and still in effect, the agent's authority
29 were genuine, valid, and still in effect, and the agent had not
30 exceeded and had not improperly exercised the authority.

31 4. A person that is asked to accept an acknowledged power
32 of attorney may request, and rely upon, all of the following
33 without further investigation:

34 a. An agent's certification under penalty of perjury of any
35 factual matter concerning the principal, agent, or power of

1 attorney in substantially the same form as set out in section
2 633B.302.

3 *b.* An English translation of the power of attorney if the
4 power of attorney contains, in whole or in part, language other
5 than English.

6 *c.* An opinion of agent's counsel as to any matter of law
7 concerning the power of attorney if the person making the
8 request provides the reason for the request in a writing.

9 5. An English translation or an opinion of counsel requested
10 under this section shall be provided at the principal's expense
11 unless the request is made more than ten business days after
12 the power of attorney is presented for acceptance.

13 6. For purposes of this section and section 633B.120, a
14 person who conducts activities through an employee is without
15 actual knowledge of a fact relating to a power of attorney,
16 a principal, or an agent if the employee conducting the
17 transaction involving the power of attorney is without actual
18 knowledge of the fact.

19 Sec. 22. NEW SECTION. 633B.120 **Refusal to accept**
20 **acknowledged power of attorney — liability.**

21 1. Except as otherwise provided in subsection 2, all of
22 the following shall apply to a person's actions regarding an
23 acknowledged power of attorney:

24 *a.* A person shall either accept an acknowledged power of
25 attorney or request a certification, a translation, or an
26 opinion of counsel under section 633B.119, subsection 4, no
27 later than seven business days after presentation of the power
28 of attorney for acceptance.

29 *b.* If a person requests a certification, a translation, or
30 an opinion of counsel under section 633B.199, subsection 4, the
31 person shall accept the power of attorney no later than five
32 business days after receipt of the certification, translation,
33 or opinion of counsel.

34 2. A person is not required to accept an acknowledged power
35 of attorney if any of the following occur:

1 *a.* The person is not otherwise required to engage in a
2 transaction with the principal in the same circumstances.

3 *b.* Engaging in a transaction with the agent or the principal
4 in the same circumstances would be inconsistent with federal
5 law.

6 *c.* The person has actual knowledge of the termination of the
7 agent's authority or of the power of attorney before exercise
8 of the power.

9 *d.* A request for a certification, a translation, or an
10 opinion of counsel under section 633B.119, subsection 4, is
11 refused.

12 *e.* The person in good faith believes that the power is
13 not valid or that the agent does not have the authority to
14 perform the act requested, whether or not a certification, a
15 translation, or an opinion of counsel under section 633B.119,
16 subsection 4, has been requested or provided.

17 *f.* The person makes, or has actual knowledge that another
18 person has made, a report to the department of human services
19 stating a good-faith belief that the principal may be subject
20 to physical or financial abuse, neglect, exploitation, or
21 abandonment by the agent or a person acting for or with the
22 agent.

23 3. A person that refuses to accept an acknowledged power of
24 attorney in violation of this section is subject to both of the
25 following:

26 *a.* A court order mandating acceptance of the power of
27 attorney.

28 *b.* Liability for damages sustained by the principal for
29 reasonable attorney fees and costs incurred in any action or
30 proceeding that confirms the validity of the power of attorney
31 or mandates acceptance of the power of attorney, provided that
32 any such action must be brought within one year of the initial
33 request for acceptance of the power of attorney.

34 Sec. 23. NEW SECTION. 633B.121 Principles of law and
35 equity.

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

3 Sec. 24. NEW SECTION. 633B.122 **Laws applicable to financial**
4 **institutions and entities.**

5 This chapter does not supersede any other law applicable to
6 financial institutions or other entities, and the other law
7 controls if inconsistent with this chapter.

8 Sec. 25. NEW SECTION. 633B.123 **Remedies under other law.**

9 The remedies under this chapter are not exclusive and do not
10 abrogate any right or remedy under the law of this state other
11 than this chapter.

12 Sec. 26. NEW SECTION. 633B.201 **Authority — specific and**
13 **general.**

14 1. An agent under a power of attorney may do any of the
15 following on behalf of the principal or with the principal's
16 property only if the power of attorney expressly grants the
17 agent the authority and the exercise of the authority is not
18 otherwise prohibited by another agreement or instrument to
19 which the authority or property is subject:

20 a. Create, amend, revoke, or terminate an inter vivos trust.

21 b. Make a gift.

22 c. Create or change rights of survivorship.

23 d. Create or change a beneficiary designation.

24 e. Delegate authority granted under the power of attorney.

25 f. Waive the principal's right to be a beneficiary of a
26 joint and survivor annuity, including but not limited to a
27 survivor benefit under a retirement plan.

28 g. Exercise fiduciary powers that the principal has
29 authority to delegate.

30 h. Disclaim property, including but not limited to a power
31 of appointment.

32 2. Notwithstanding a grant of authority to do an act
33 described in subsection 1, unless the power of attorney
34 otherwise provides, an agent that is not an ancestor, spouse,
35 or descendant of the principal shall not exercise authority

1 under a power of attorney to create in the agent, or in an
2 individual to whom the agent owes a legal obligation of
3 support, an interest in the principal's property, whether
4 by gift, right of survivorship, beneficiary designation,
5 disclaimer, or otherwise.

6 3. Subject to subsections 1, 2, 4, and 5, if a power
7 of attorney grants an agent authority to do all acts that
8 a principal could do, the agent has the general authority
9 described in sections 633B.204 through 633B.216.

10 4. Unless the power of attorney otherwise provides, a grant
11 of authority to make a gift is subject to section 633B.217.

12 5. Subject to subsections 1, 2, and 4, if the subjects over
13 which authority is granted in a power of attorney are similar
14 or overlap, the broadest authority controls.

15 6. Authority granted in a power of attorney is exercisable
16 with respect to property that the principal has when the power
17 of attorney is executed or acquires later, whether or not
18 the property is located in this state and whether or not the
19 authority is exercised or the power of attorney is executed in
20 this state.

21 7. An act performed by an agent pursuant to a power of
22 attorney has the same effect and inures to the benefit of and
23 binds the principal and the principal's successors in interest
24 as if the principal had performed the act.

25 Sec. 27. NEW SECTION. 633B.202 **Incorporation of authority.**

26 1. An agent has authority described in this chapter if the
27 power of attorney refers to general authority with respect
28 to the descriptive term for the subjects stated in sections
29 633B.204 through 633B.217 or cites the section in which the
30 authority is described.

31 2. A reference in a power of attorney to general authority
32 with respect to the descriptive term for a subject stated in
33 sections 633B.204 through 633B.217 or a citation to a section
34 in sections 633B.204 through 633B.217 incorporates the entire
35 section as if it were set out in full in the power of attorney.

1 3. A principal may modify authority incorporated by
2 reference.

3 Sec. 28. NEW SECTION. 633B.203 Construction of authority
4 generally.

5 Except as otherwise provided in the power of attorney, by
6 executing a power of attorney that incorporates by reference a
7 subject described in sections 633B.204 through 633B.217 or that
8 grants an agent authority to do all acts that a principal could
9 do pursuant to section 633B.201, subsection 3, a principal
10 authorizes the agent, with respect to that subject, to do all
11 of the following:

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

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

22 3. Execute, acknowledge, seal, deliver, file, or record
23 any instrument or communication the agent considers desirable
24 to accomplish a purpose of a transaction, including but not
25 limited to creating at any time a schedule listing some or all
26 of the principal's property and attaching the instrument of
27 communication to the power of attorney.

28 4. Initiate, participate in, submit to alternative dispute
29 resolution, settle, oppose, or propose or accept a compromise
30 with respect to a claim existing in favor of or against the
31 principal or intervene in litigation relating to the claim.

32 5. Seek on the principal's behalf the assistance of a court
33 or other governmental agency to carry out an act authorized in
34 the power of attorney.

35 6. Engage, compensate, and discharge an attorney,

1 accountant, discretionary investment manager, expert witness,
2 or other advisor.

3 7. Prepare, execute, and file a record, report, or other
4 document to safeguard or promote the principal's interest under
5 a statute, rule, or regulation.

6 8. Communicate with any representative or employee
7 of a government or governmental subdivision, agency, or
8 instrumentality, on behalf of the principal.

9 9. Access communications intended for, and communicate
10 on behalf of the principal, whether by mail, electronic
11 transmission, telephone, or other means.

12 10. Do any lawful act with respect to the subject and all
13 property related to the subject.

14 Sec. 29. NEW SECTION. 633B.204 Real property.

15 Unless the power of attorney otherwise provides and subject
16 to section 633B.201, language in a power of attorney granting
17 general authority with respect to real property authorizes the
18 agent to do all of the following:

19 1. Demand, buy, lease, receive, accept as a gift or as
20 security for an extension of credit, or otherwise acquire or
21 reject an interest in real property or a right incident to real
22 property.

23 2. Sell; exchange; convey with or without covenants,
24 representations, or warranties; quitclaim; release; surrender;
25 retain title for security; encumber; partition; consent to
26 partitioning; be subject to an easement or covenant; subdivide;
27 apply for zoning or other governmental permits; plat or consent
28 to platting; develop; grant an option concerning; lease;
29 sublease; contribute to an entity in exchange for an interest
30 in that entity; or otherwise grant or dispose of an interest in
31 real property or a right incident to real property.

32 3. Pledge or mortgage an interest in real property or right
33 incident to real property as security to borrow money or pay,
34 renew, or extend the time of payment of a debt of the principal
35 or a debt guaranteed by the principal.

1 4. Release, assign, satisfy, or enforce by litigation
2 or otherwise, a mortgage, deed of trust, conditional sale
3 contract, encumbrance, lien, or other claim to real property
4 which exists or is asserted.

5 5. Manage or conserve an interest in real property or a
6 right incident to real property owned or claimed to be owned
7 by the principal, including but not limited to by doing all of
8 the following:

9 a. Insuring against liability or casualty or other loss.

10 b. Obtaining or regaining possession of or protecting the
11 interest or right by litigation or otherwise.

12 c. Paying, assessing, compromising, or contesting taxes or
13 assessments or applying for and receiving refunds in connection
14 with them.

15 d. Purchasing supplies, hiring assistance or labor, and
16 making repairs or alterations to the real property.

17 6. Use, develop, alter, replace, remove, erect, or install
18 structures or other improvements upon real property in or
19 incident to which the principal has, or claims to have, an
20 interest or right.

21 7. Participate in a reorganization with respect to real
22 property or an entity that owns an interest in or a right
23 incident to real property and receive, hold, and act with
24 respect to stocks and bonds or other property received in
25 a plan of reorganization, including by doing any of the
26 following:

27 a. By selling or otherwise disposing of the stocks, bonds,
28 or other property.

29 b. By exercising or selling an option, right of conversion,
30 or similar right.

31 c. By exercising any voting rights in person or by proxy.

32 8. Change the form of title of an interest in or right
33 incident to real property.

34 9. Dedicate to public use, with or without consideration,
35 easements or other real property in which the principal has,

1 or claims to have, an interest.

2 Sec. 30. NEW SECTION. 633B.205 **Tangible personal property.**

3 Unless the power of attorney otherwise provides and subject
4 to section 633B.201, language in a power of attorney granting
5 general authority with respect to tangible personal property
6 authorizes the agent to do all of the following:

7 1. Demand, buy, receive, accept as a gift or as security
8 for an extension of credit, or otherwise acquire or reject
9 ownership or possession of tangible personal property or an
10 interest in tangible personal property.

11 2. Sell; exchange; convey with or without covenants,
12 representations, or warranties; quitclaim; release; surrender;
13 create a security interest in; grant options concerning; lease;
14 sublease; or, otherwise dispose of tangible personal property
15 or an interest in tangible personal property.

16 3. Grant a security interest in tangible personal property
17 or an interest in tangible personal property as security to
18 borrow money or pay, renew, or extend the time of payment of a
19 debt of the principal or a debt guaranteed by the principal.

20 4. Release, assign, satisfy, or enforce by litigation or
21 otherwise, a security interest, lien, or other claim on behalf
22 of the principal, with respect to tangible personal property or
23 an interest in tangible personal property.

24 5. Manage or conserve tangible personal property or an
25 interest in tangible personal property on behalf of the
26 principal, including by doing all of the following:

27 a. Insuring against liability or casualty or other loss.

28 b. Obtaining or regaining possession of or protecting the
29 property or interest, by litigation or otherwise.

30 c. Paying, assessing, compromising, or contesting taxes or
31 assessments or applying for and receiving refunds in connection
32 with taxes or assessments.

33 d. Moving the property from place to place.

34 e. Storing the property for hire or on a gratuitous
35 bailment.

1 *f.* Using and making repairs, alterations, or improvements to
2 the property.

3 6. Change the form of title of an interest in tangible
4 personal property.

5 Sec. 31. NEW SECTION. **633B.206 Stocks and bonds.**

6 Unless the power of attorney otherwise provides and subject
7 to section 633B.201, language in a power of attorney granting
8 general authority with respect to stocks and bonds authorizes
9 the agent to do all of the following:

10 1. Buy, sell, and exchange stocks and bonds.

11 2. Establish, continue, modify, or terminate an account
12 with respect to stocks and bonds.

13 3. Pledge stocks and bonds as security to borrow, pay,
14 renew, or extend the time of payment of a debt of the
15 principal.

16 4. Receive certificates and other evidence of ownership
17 with respect to stocks and bonds.

18 5. Exercise voting rights with respect to stocks and bonds
19 in person or by proxy, enter into voting trusts, and consent to
20 limitations on the right to vote.

21 Sec. 32. NEW SECTION. **633B.207 Commodities and options.**

22 Unless the power of attorney otherwise provides and subject
23 to section 633B.201, language in a power of attorney granting
24 general authority with respect to commodities and options
25 authorizes the agent to do all of the following:

26 1. Buy, sell, exchange, assign, settle, and exercise
27 commodity futures contracts and call or put options on stocks
28 or stock indexes traded on a regulated option exchange.

29 2. Establish, continue, modify, and terminate option
30 accounts.

31 Sec. 33. NEW SECTION. **633B.208 Banks and other financial
32 institutions.**

33 Unless the power of attorney otherwise provides and subject
34 to section 633B.201, language in a power of attorney granting
35 general authority with respect to banks and other financial

1 institutions authorizes the agent to do all of the following:

2 1. Continue, modify, and terminate an account or other
3 banking arrangement made by or on behalf of the principal.

4 2. Establish, modify, and terminate an account or other
5 banking arrangement with a bank, trust company, savings and
6 loan association, credit union, thrift company, brokerage firm,
7 or other financial institution selected by the agent.

8 3. Contract for services available from a financial
9 institution, including but not limited to renting a safe
10 deposit box or space in a vault.

11 4. Withdraw, by check, order, electronic funds transfer, or
12 otherwise, money or property of the principal deposited with or
13 left in the custody of a financial institution.

14 5. Receive statements of account, vouchers, notices, and
15 similar documents from a financial institution and act with
16 respect to them.

17 6. Enter a safe deposit box or vault and withdraw or add to
18 the contents.

19 7. Borrow money and pledge as security personal property
20 of the principal necessary to borrow money or pay, renew, or
21 extend the time of payment of a debt of the principal or a debt
22 guaranteed by the principal.

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

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

35 10. Apply for, receive, and use letters of credit, credit

1 and debit cards, electronic transaction authorizations, and
2 traveler's checks from a financial institution and give an
3 indemnity or other agreement in connection with letters of
4 credit.

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 Sec. 34. NEW SECTION. 633B.209 **Operation of entity or**
9 **business.**

10 Subject to the terms of a document or an agreement governing
11 an entity or business or an entity or business ownership
12 interest, and subject to section 633B.201, and unless the
13 power of attorney otherwise provides, language in a power of
14 attorney granting general authority with respect to operation
15 of an entity or business authorizes the agent to do all of the
16 following:

17 1. Operate, buy, sell, enlarge, reduce, or terminate an
18 ownership interest.

19 2. Perform a duty or discharge a liability and exercise in
20 person or by proxy a right, power, privilege, or option that
21 the principal has, may have, or claims to have.

22 3. Enforce the terms of an ownership agreement.

23 4. Initiate, participate in, submit to alternative dispute
24 resolution, settle, oppose, or propose or accept a compromise
25 with respect to litigation to which the principal is a party
26 because of an ownership interest.

27 5. Exercise in person or by proxy or enforce by litigation
28 or otherwise, a right, power, privilege, or option the
29 principal has or claims to have as the holder of stocks and
30 bonds.

31 6. Initiate, participate in, submit to alternative dispute
32 resolution, settle, oppose, or propose or accept a compromise
33 with respect to litigation to which the principal is a party
34 concerning stocks and bonds.

35 7. Do all of the following with respect to an entity or

1 business owned solely by the principal:

2 *a.* Continue, modify, renegotiate, extend, and terminate a
3 contract made by or on behalf of the principal with respect
4 to the entity or business before execution of the power of
5 attorney.

6 *b.* Determine all of the following:

7 (1) The location of the entity or business operation.

8 (2) The nature and extent of the entity or business.

9 (3) The methods of manufacturing, selling, merchandising,
10 financing, accounting, and advertising employed in the
11 operation of the entity or business.

12 (4) The amount and types of insurance carried by the entity
13 or business.

14 (5) The mode of engaging, compensating, and dealing with
15 the employees, accountants, attorneys, or other advisors of the
16 entity or business.

17 *c.* Change the name or form of organization under which the
18 entity or business is operated and enter into an ownership
19 agreement with other persons to take over all or part of the
20 operation of the entity or business.

21 *d.* Demand and receive money due or claimed by the principal
22 or on the principal's behalf in the operation of the entity or
23 business and control and disburse the money in the operation of
24 the entity or business.

25 8. Inject needed capital into an entity or business in which
26 the principal has an interest.

27 9. Join in a plan of reorganization, consolidation,
28 conversion, domestication, or merger of the entity or business.

29 10. Sell or liquidate all or part of the entity or business.

30 11. Establish the value of an entity or business under a
31 buyout agreement to which the principal is a party.

32 12. Prepare, sign, file, and deliver reports, compilations
33 of information, returns, or other papers with respect to an
34 entity or business and make related payments.

35 13. Pay, compromise, or contest taxes, assessments, fines,

1 or penalties and perform any other act to protect the principal
2 from illegal or unnecessary taxation, assessments, fines, or
3 penalties with respect to an entity or business, including but
4 not limited to attempts to recover, in any manner permitted by
5 law, money paid before or after the execution of the power of
6 attorney.

7 Sec. 35. NEW SECTION. **633B.210 Insurance and annuities.**

8 Unless the power of attorney otherwise provides and subject
9 to section 633B.201, language in a power of attorney granting
10 general authority with respect to insurance and annuities
11 authorizes the agent to do all of the following:

12 1. Continue, pay the premium or make a contribution on,
13 modify, exchange, rescind, release, or terminate a contract
14 procured by or on behalf of the principal which insures or
15 provides an annuity to either the principal or another person
16 whether or not the principal is a beneficiary under the
17 contract.

18 2. Procure new, different, and additional contracts of
19 insurance and annuities for the principal and the principal's
20 spouse, children, and other dependents, and select the amount,
21 type of insurance or annuity, and mode of payment.

22 3. Pay the premium or make a contribution on, modify,
23 exchange, rescind, release, or terminate a contract of
24 insurance or annuity procured by the agent.

25 4. Apply for and receive a loan secured by a contract of
26 insurance or annuity.

27 5. Surrender and receive the cash surrender value on a
28 contract of insurance or annuity.

29 6. Exercise an election.

30 7. Exercise investment powers available under a contract of
31 insurance or annuity.

32 8. Change the manner of paying premiums on a contract of
33 insurance or annuity.

34 9. Change or convert the type of insurance or annuity with
35 respect to which the principal has or claims to have authority

1 described in this section.

2 10. Apply for and procure a benefit or assistance under a
3 statute, rule, or regulation to guarantee or pay premiums of a
4 contract of insurance on the life of the principal.

5 11. Collect, sell, assign, hypothecate, borrow against, or
6 pledge the interest of the principal in a contract of insurance
7 or annuity.

8 12. Select the form and timing of the payment of proceeds
9 from a contract of insurance or annuity.

10 13. Pay, from proceeds or otherwise, compromise or contest,
11 and apply for refunds in connection with a tax or assessment
12 levied by a taxing authority with respect to a contract of
13 insurance or annuity or its proceeds or liability accruing by
14 reason of the tax or assessment.

15 Sec. 36. NEW SECTION. 633B.211 **Estates, trusts, and other**
16 **beneficial interests.**

17 1. In this section, "*estate, trust, or other beneficial*
18 *interest*" means a trust, probate estate, guardianship,
19 conservatorship, escrow, or custodianship, or a fund from which
20 the principal is, may become, or claims to be, entitled to a
21 share or payment.

22 2. Unless the power of attorney otherwise provides,
23 language in a power of attorney granting general authority with
24 respect to estates, trusts, and other beneficial interests
25 authorizes the agent to do all of the following:

26 *a.* Accept, receive, provide a receipt for, sell, assign,
27 pledge, or exchange a share in or payment from an estate,
28 trust, or other beneficial interest.

29 *b.* Demand or obtain money or another thing of value to which
30 the principal is, may become, or claims to be, entitled by
31 reason of an estate, trust, or other beneficial interest, by
32 litigation or otherwise.

33 *c.* Exercise for the benefit of the principal a presently
34 exercisable general power of appointment held by the principal.

35 *d.* Initiate, participate in, submit to alternative dispute

1 resolution, settle, oppose, or propose or accept a compromise
2 with respect to litigation to ascertain the meaning, validity,
3 or effect of a deed, will, declaration of trust, or other
4 instrument or transaction affecting the interest of the
5 principal.

6 e. Initiate, participate in, submit to alternative dispute
7 resolution, settle, oppose, or propose or accept a compromise
8 with respect to litigation to remove, substitute, or surcharge
9 a fiduciary.

10 f. Conserve, invest, disburse, or use any assets received
11 for an authorized purpose.

12 g. Transfer an interest of the principal in real property,
13 stocks and bonds, accounts with financial institutions or
14 securities intermediaries, insurance, annuities, and other
15 property to the trustee of a revocable trust created by the
16 principal as settlor.

17 h. Reject, renounce, disclaim, release, or consent to a
18 reduction in or modification of a share in or payment from an
19 estate, trust, or other beneficial interest.

20 Sec. 37. NEW SECTION. 633B.212 Claims and litigation.

21 Unless the power of attorney otherwise provides and subject
22 to section 633B.201, language in a power of attorney granting
23 general authority with respect to claims and litigation
24 authorizes the agent to do all of the following:

25 1. Assert and maintain before a court or administrative
26 agency a claim, claim for relief, cause of action,
27 counterclaim, offset, recoupment, or defense, including but
28 not limited to an action to recover property or other thing of
29 value, recover damages sustained by the principal, eliminate
30 or modify tax liability, or seek an injunction, specific
31 performance, or other relief.

32 2. Bring an action to determine adverse claims or intervene
33 or otherwise participate in litigation.

34 3. Seek an attachment, garnishment, or other preliminary,
35 provisional, or intermediate relief and use an available

1 procedure to effect or satisfy a judgment, order, or decree.

2 4. Make or accept a tender, offer of judgment, or admission
3 of facts, submit a controversy on an agreed statement of facts,
4 consent to examination, and bind the principal in litigation.

5 5. Submit to alternative dispute resolution, or settle,
6 propose, or accept a compromise.

7 6. Waive the issuance and service of process upon the
8 principal, accept service of process, appear for the principal,
9 designate persons upon which process directed to the principal
10 may be served, execute and file or deliver stipulations on the
11 principal's behalf, verify pleadings, seek appellate review,
12 procure and give surety and indemnity bonds, contract and
13 pay for the preparation and printing of records and briefs,
14 receive, execute, and file or deliver a consent, waiver,
15 release, confession of judgment, satisfaction of judgment,
16 notice, agreement, or other instrument in connection with the
17 prosecution, settlement, or defense of a claim or litigation.

18 7. Act for the principal with respect to bankruptcy or
19 insolvency, whether voluntary or involuntary, concerning
20 the principal or some other person, or with respect to
21 a reorganization, receivership, or application for the
22 appointment of a receiver or trustee which affects an interest
23 of the principal in property or other thing of value.

24 8. Pay a judgment, award, or order against the principal or
25 a settlement made in connection with a claim or litigation.

26 9. Receive money or other thing of value paid in settlement
27 of or as proceeds of a claim or litigation.

28 Sec. 38. NEW SECTION. 633B.213 **Personal and family**
29 **maintenance.**

30 1. Unless the power of attorney otherwise provides and
31 subject to subsection 633B.201, language in a power of attorney
32 granting general authority with respect to personal and family
33 maintenance authorizes the agent to do all of the following:

34 a. Perform the acts necessary to maintain the customary
35 standard of living of the principal, the principal's spouse,

1 and the following individuals, whether living when the power of
2 attorney is executed or later born:

3 (1) The principal's minor children.

4 (2) The principal's adult children who are pursuing a
5 postsecondary school education and are under the age of
6 twenty-five.

7 (3) The principal's parents or the parents of the
8 principal's spouse, if the principal had established a pattern
9 of such payments.

10 (4) Any other individuals legally entitled to be supported
11 by the principal.

12 *b.* Make periodic payments of child support and other family
13 maintenance required by a court or governmental agency or an
14 agreement to which the principal is a party.

15 *c.* Provide living quarters for the individuals described in
16 paragraph "a" by any of the following:

17 (1) Purchase, lease, or other contract.

18 (2) Paying the operating costs, including but not limited
19 to interest, amortization payments, repairs, improvements, and
20 taxes, for premises owned by the principal or occupied by those
21 individuals.

22 *d.* Provide funds for shelter, clothing, food, appropriate
23 education, including postsecondary and vocational education,
24 and other current living costs for the individuals described
25 in paragraph "a" to enable those individuals to maintain their
26 customary standard of living.

27 *e.* Pay expenses for necessary health care and custodial care
28 on behalf of the individuals described in paragraph "a".

29 *f.* Act as the principal's personal representative pursuant
30 to the federal Health Insurance Portability and Accountability
31 Act of 1996, Pub. L. No. 104-191, including amendments thereto
32 and regulations promulgated thereunder, in making decisions
33 related to past, present, or future payments for the provision
34 of health care consented to by the principal or anyone
35 authorized under the law of this state to consent to health

1 care on behalf of the principal.

2 *g.* 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 "a".

6 *h.* Maintain credit and debit accounts for the convenience
7 of the individuals described in paragraph "a" and open new
8 accounts.

9 *i.* Continue payments or contributions incidental to the
10 membership or affiliation of the principal in a religious
11 institution, club, society, order, or other organization.

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

16 Sec. 39. NEW SECTION. 633B.214 **Benefits from governmental**
17 **programs or civil or military service.**

18 1. In this section, "*benefits from governmental programs*
19 *or civil or military service*" means any benefit, program,
20 or assistance provided under a statute, rule, or regulation
21 relating to but not limited to social security, Medicare, or
22 Medicaid.

23 2. Unless the power of attorney otherwise provides,
24 language in a power of attorney granting general authority
25 with respect to benefits from governmental programs or civil
26 or military service authorizes the agent to do all of the
27 following:

28 *a.* Execute vouchers in the name of the principal for
29 allowances and reimbursements payable by the United States, a
30 foreign government, or a state or subdivision of a state to
31 the principal, including but not limited to allowances and
32 reimbursements for transportation of the individuals described
33 in section 633B.213, subsection 1, paragraph "a", and for
34 shipment of the household effects of such individuals.

35 *b.* Take possession and order the removal and shipment of

1 property of the principal from a post, warehouse, depot, dock,
2 or other place of storage or safekeeping, either governmental
3 or private, and execute and deliver a release, voucher,
4 receipt, bill of lading, shipping ticket, certificate, or other
5 instrument for that purpose.

6 c. Enroll in, apply for, select, reject, change, amend, or
7 discontinue, on the principal's behalf, a benefit or program.

8 d. Prepare, file, and maintain a claim of the principal for
9 a benefit or assistance, financial or otherwise, to which the
10 principal may be entitled under a statute, rule, or regulation.

11 e. Initiate, participate in, submit to alternative dispute
12 resolution, settle, oppose, or propose or accept a compromise
13 with respect to litigation concerning any benefit or assistance
14 the principal may be entitled to receive under a statute, rule,
15 or regulation.

16 f. Receive the financial proceeds of a claim described in
17 paragraph "d" and conserve, invest, disburse, or use for a
18 lawful purpose anything so received.

19 Sec. 40. NEW SECTION. 633B.215 Retirement plans.

20 1. In this section, "*retirement plan*" means a plan or
21 account created by an employer, the principal, or another
22 individual to provide retirement benefits or deferred
23 compensation in which the principal is a participant,
24 beneficiary, or owner, including but not limited to a plan or
25 account under the following sections of the Internal Revenue
26 Code:

27 a. An individual retirement account in accordance with
28 section 408.

29 b. A Roth individual retirement account established under
30 section 408A.

31 c. A deemed individual retirement account under section
32 408(q).

33 d. An annuity or mutual fund custodial account under section
34 403(b).

35 e. A pension, profit-sharing, stock bonus, or other

1 retirement plan qualified under section 401(a).

2 *f.* An eligible deferred compensation plan under section
3 457(b).

4 *g.* A nonqualified deferred compensation plan under section
5 409A.

6 2. Unless the power of attorney otherwise provides,
7 language in a power of attorney granting general authority with
8 respect to retirement plans authorizes the agent to do all of
9 the following:

10 *a.* Select the form and timing of payments under a retirement
11 plan and withdraw benefits from a plan.

12 *b.* Make a rollover, including a direct trustee-to-trustee
13 rollover of benefits from one retirement plan to another.

14 *c.* Establish a retirement plan in the principal's name.

15 *d.* Make contributions to a retirement plan.

16 *e.* Exercise investment powers available under a retirement
17 plan.

18 *f.* Borrow from, sell assets to, or purchase assets from a
19 retirement plan.

20 Sec. 41. NEW SECTION. 633B.216 **Taxes.**

21 Unless the power of attorney otherwise provides, language in
22 a power of attorney granting general authority with respect to
23 taxes authorizes the agent to do all of the following:

24 1. Prepare, sign, and file federal, state, local, and
25 foreign income, gift, payroll, property, Federal Insurance
26 Contributions Act returns and other tax returns, claims for
27 refunds, requests for extension of time, petitions regarding
28 tax matters, and any other tax-related documents, including
29 receipts, offers, waivers, consents, including but not limited
30 to consents and agreements under section 2032A of the Internal
31 Revenue Code, closing agreements, and any power of attorney
32 required by the Internal Revenue Service or other taxing
33 authority with respect to a tax year upon which the statute of
34 limitations has not run.

35 2. Pay taxes due, collect refunds, post bonds, receive

1 confidential information, and contest deficiencies determined
2 by 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.

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

8 Sec. 42. NEW SECTION. 633B.217 Gifts.

9 1. In this section, a gift "*for the benefit of*" a person
10 includes a gift to a trust, an account under a uniform
11 transfers to minors Act, and a qualified state tuition program
12 exempt from taxation pursuant to section 529 of the Internal
13 Revenue Code.

14 2. Unless the power of attorney otherwise provides,
15 language in a power of attorney granting general authority with
16 respect to gifts authorizes the agent only to do all of the
17 following:

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

29 b. Consent to the splitting of a gift made by the
30 principal's spouse pursuant to section 2513 of the Internal
31 Revenue Code in an amount per donee not to exceed the aggregate
32 annual gift tax exclusions for both spouses.

33 3. An agent may make a gift of the principal's property
34 only as the agent determines is consistent with the principal's
35 objectives if actually known by the agent and, if unknown,

1 as the agent determines is consistent with the principal's
2 best interest based on all relevant factors, including but not
3 limited to all of the following:

4 a. The value and nature of the principal's property.

5 b. The principal's foreseeable obligations and need for
6 maintenance.

7 c. The minimization of taxes, including but not limited to
8 income, estate, inheritance, generation-skipping transfer, and
9 gift taxes.

10 d. Eligibility for a benefit, a program, or assistance under
11 a statute, rule, or regulation.

12 e. The principal's personal history of making or joining in
13 making gifts.

14 Sec. 43. NEW SECTION. 633B.301 Power of attorney — form.

15 A document substantially in the following form may be used to
16 create a statutory power of attorney that has the meaning and
17 effect prescribed by this chapter:

18 IOWA STATUTORY POWER OF ATTORNEY FORM

19 1. POWER OF ATTORNEY

20 This power of attorney authorizes another person (your
21 agent) to make decisions concerning your property for you (the
22 principal). Your agent will be able to make decisions and act
23 with respect to your property (including but not limited to
24 your money) whether or not you are able to act for yourself.
25 The meaning of authority over subjects listed on this form is
26 explained in the Iowa Uniform Power of Attorney Act, Iowa Code
27 chapter 633B.

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

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

34 Your agent is not entitled to compensation unless you state
35 otherwise in the optional Special Instructions.

H.F. _____

1 This form provides for designation of one agent. If you
2 wish to name more than one agent, you may name a coagent in the
3 optional Special Instructions. Coagents must act by majority
4 rule unless you provide otherwise in the optional Special
5 Instructions.

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

9 This power of attorney becomes effective immediately upon
10 signature and acknowledgment unless you state otherwise in the
11 optional Special Instructions.

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

15 DESIGNATION OF AGENT

16 I _____ (name of principal) name the
17 following person as my agent:

18 Name of Agent _____

19 Agent's Address _____

20 Agent's Telephone Number _____

21 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

24 Name of Successor Agent _____

25 Successor Agent's Address _____

26 Successor Agent's Telephone Number _____

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

29 Name of Second Successor Agent _____

30 Second Successor Agent's Address _____

31 Second Successor Agent's Telephone Number _____

32 GRANT OF GENERAL AUTHORITY

33 I grant my agent and any successor agent general authority to
34 act for me with respect to the following subjects as defined in
35 the Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B:

1 (Initial each subject you want to include in the agent's
2 general authority. If you wish to grant general authority over
3 all of the subjects you may initial "All Preceding Subjects"
4 instead of initialing each subject.)

- 5 ___ Real Property
- 6 ___ Tangible Personal Property
- 7 ___ Stocks and Bonds
- 8 ___ Commodities and Options
- 9 ___ Banks and Other Financial Institutions
- 10 ___ Operation of Entity or Business
- 11 ___ Insurance and Annuities
- 12 ___ Estates, Trusts, and Other Beneficial Interests
- 13 ___ Claims and Litigation
- 14 ___ Personal and Family Maintenance
- 15 ___ Benefits from Governmental Programs or Civil or Military
16 Service
- 17 ___ Retirement Plans
- 18 ___ Taxes
- 19 ___ All Preceding Subjects

20 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

21 My agent shall not do any of the following specific acts for
22 me unless I have initialed the specific authority listed below:
23 (Caution: Granting any of the following will give your agent
24 the authority to take actions that could significantly reduce
25 your property or change how your property is distributed at
26 your death. Initial only the specific authority you WANT to
27 give your agent.)

28 ___ Amend, revoke, or terminate a revocable inter vivos
29 trust, if authorized by the trust.

30 ___ Agree to the amendment or termination of any other inter
31 vivos trust.

32 ___ Make a gift to an individual who is not an agent, subject
33 to the limitations of the Iowa Uniform Power of Attorney Act,
34 Iowa Code section 633B.217, and any special instructions in
35 this power of attorney.

H.F. _____

1 Make gifts, either direct or indirect, to my agent acting
2 under this power of attorney as follows:

3 ___ Any such gift must be approved in writing by
4 _____; or

5 ___ No third party approval is needed.

6 ___ Authorize another person to exercise the authority
7 granted under this power of attorney.

8 ___ Waive the principal's right to be a beneficiary of a
9 joint and survivor annuity, including a survivor benefit under
10 a retirement plan.

11 ___ Exercise fiduciary powers that the principal has
12 authority to delegate.

13 ___ Disclaim or refuse an interest in property, including a
14 power of appointment.

15 LIMITATION ON AGENT'S AUTHORITY

16 An agent that is not my ancestor, spouse, or descendant shall
17 not use my property to benefit the agent or a person to whom the
18 agent owes an obligation of support unless I have included that
19 authority in the optional Special Instructions.

20 SPECIAL INSTRUCTIONS (OPTIONAL)

21 You may give special instructions on the following lines:

22 _____

23 _____

24 _____

25 _____

26 _____

27 _____

28 _____

29 _____

30 _____

31 _____

32 _____

33 _____ shall have the authority to
34 request an accounting of any agent.

35 EFFECTIVE DATE

H.F. _____

1 This power of attorney is effective immediately upon
2 signature and acknowledgment unless I have stated otherwise in
3 the optional Special Instructions.

4 NOMINATION OF CONSERVATOR AND GUARDIAN (OPTIONAL)

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

8 Name of Nominee for Conservator of My Estate _____
9 Nominee's Address _____
10 Nominee's Telephone Number _____
11 Name of Nominee for Guardian of My Person _____
12 Nominee's Address _____
13 Nominee's Telephone Number _____

14 RELIANCE ON THIS POWER OF ATTORNEY

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

18 SIGNATURE AND ACKNOWLEDGMENT

19 _____
20 Your Signature _____ Date

21 _____
22 Your Name Printed

23 _____
24 _____

25 Your Address
26 _____

27 Your Telephone Number
28 State of _____

29 County of _____

30 This document was acknowledged before me on _____
31 (date), by _____ (name of principal)
32 _____ (Seal, if any)

33 Signature of Notary
34 My commission expires _____

35 This document prepared by

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2. IMPORTANT INFORMATION FOR AGENT
AGENT'S DUTIES

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

Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest.

Act in good faith.

Do nothing beyond the authority granted in this power of attorney.

Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as agent in the following manner:

_____ (principal's name) by
_____ (your signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also do all of the following:

Act loyally for the principal's benefit.

Avoid conflicts that would impair your ability to act in the principal's best interest.

Act with care, competence, and diligence.

Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.

Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the

1 principal's best interest.

2 TERMINATION OF AGENT'S AUTHORITY

3 You must stop acting on behalf of the principal if you learn
4 of any event that terminates this power of attorney or your
5 authority under this power of attorney. Events that terminate
6 a power of attorney or your authority to act under a power of
7 attorney include any of the following:

8 Death of the principal.

9 The principal's revocation of the power of attorney or your
10 authority.

11 The occurrence of a termination event stated in the power of
12 attorney.

13 The purpose of the power of attorney is fully accomplished.

14 If you are married to the principal, a legal action is
15 filed with a court to end your marriage, or for your legal
16 separation, unless the Special Instructions in this power of
17 attorney state that such an action will not terminate your
18 authority.

19 LIABILITY OF AGENT

20 The meaning of the authority granted to you is defined in the
21 Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B. If
22 you violate the Iowa Uniform Power of Attorney Act, Iowa Code
23 chapter 633B, or act outside the authority granted, you may be
24 liable for any damages caused by your violation.

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

27 Sec. 44. NEW SECTION. 633B.302 Agent's certification —
28 optional form.

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

31 IOWA STATUTORY POWER OF ATTORNEY AGENT'S CERTIFICATION FORM
32 AGENT'S CERTIFICATION OF VALIDITY OF POWER OF ATTORNEY AND
33 AGENT'S AUTHORITY

34 State of _____

35 County of _____

H.F. _____

1 I, _____ (name of agent), certify
2 under penalty of perjury that _____
3 (name of principal) granted me authority as an agent
4 or successor agent in a power of attorney dated
5 _____.

6 I further certify all of the following to my knowledge:
7 The principal is alive and has not revoked the power of
8 attorney or the Power of Attorney and my authority to act under
9 the Power of Attorney have not terminated.

10 If the power of attorney was drafted to become effective
11 upon the happening of an event or contingency, the event or
12 contingency has occurred.

13 If I was named as a successor agent, the prior agent is no
14 longer able or willing to serve.

15 _____
16 _____
17 _____.

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

20 _____
21 Agent's Signature _____ Date

22 _____
23 Agent's Name Printed

24 _____
25 _____

26 Agent's Address
27 _____

28 Agent's Telephone Number

29 This document was acknowledged before me on _____
30 (date), by _____ (name of agent)

31 _____ (Seal, if any)

32 Signature of Notary

33 My commission expires _____

34 This document prepared by

35 _____

1

2 Sec. 45. NEW SECTION. 633B.401 Uniformity of application
3 and construction.

4 In applying and construing this chapter, consideration shall
5 be given to the need to promote uniformity of the law with
6 respect to the subject matter of this chapter among states that
7 enact the uniform power of attorney Act.

8 Sec. 46. NEW SECTION. 633B.402 Relation to Electronic
9 Signatures in Global and National Commerce Act.

10 This chapter modifies, limits, and supersedes the federal
11 Electronic Signatures in Global and National Commerce Act, 15
12 U.S.C. §7001 et seq., but does not modify, limit, or supersede
13 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
14 electronic delivery of any of the notices described in section
15 103(b) of that Act, 15 U.S.C. §7003(b).

16 Sec. 47. NEW SECTION. 633B.403 Effect on existing powers of
17 attorney — attorney in fact.

18 1. This chapter applies to a power of attorney created on
19 or after July 1, 2014.

20 2. This chapter applies to all proceedings concerning a
21 power of attorney commenced on or after July 1, 2014.

22 3. This chapter applies to all proceedings concerning a
23 power of attorney commenced before July 1, 2014, unless the
24 court finds that application of a provision of this chapter
25 would substantially interfere with the effective conduct of the
26 proceedings or the rights of the parties or other interested
27 persons. In that case, the provision does not apply and the
28 court shall apply prior law.

29 4. *a.* This chapter applies to all acts taken by an attorney
30 in fact on or after July 1, 2014.

31 *b.* This chapter does not apply to acts taken by an attorney
32 in fact prior to July 1, 2014.

33 Sec. 48. REPEAL. Sections 633B.1 and 633B.2, Code 2014,
34 are repealed.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill creates the Iowa uniform power of attorney Act and
4 provides penalties and includes applicability provisions.

5 Current Code chapter 633B relating to powers of attorney
6 contains provisions relating to situations in which a power
7 of attorney is not affected by the death or disability of the
8 principal and provides notice provisions for the revocation or
9 termination of a power of attorney.

10 The bill repeals current Code chapter 633B and replaces
11 it with the Iowa uniform power of attorney Act, based on
12 the uniform power of attorney Act, which provides specific
13 provisions relating to the creation, duties, responsibilities,
14 and powers of an agent designated in the power of attorney
15 document to manage the principal's finances and property. The
16 bill also provides remedies for abuses committed by an agent
17 under a power of attorney. The bill defines "agent" to mean a
18 person who is granted authority to act for a principal under a
19 power of attorney, whether referred to as an agent, attorney
20 in fact, or otherwise in the power of attorney document, and
21 includes an original agent, coagent, successor agent, and a
22 person to which an agent's authority is delegated; "person"
23 means an individual, corporation, business trust, estate,
24 trust, partnership, limited liability company, association,
25 joint venture, public corporation, government or governmental
26 subdivision, agency, or instrumentality, or any other legal
27 or commercial entity; and "principal" means an individual who
28 grants authority to an agent in a power of attorney.

29 GENERAL PROVISIONS. The bill contains the following general
30 provisions relating to a power of attorney:

31 APPLICABILITY. The bill applies to all powers of attorney
32 other than a durable power of attorney for health care (see
33 Code chapter 144B), a voting proxy, a power created on a
34 governmental form for a governmental purpose, and a power
35 coupled with an interest of the agent such as a creditor's

1 right to protect title in pledged collateral.

2 DURABILITY. A power of attorney is durable unless the power
3 of attorney expressly provides that it is terminated by the
4 principal's incapacity.

5 EXECUTION. A power of attorney must be signed by the
6 principal or in the principal's conscious presence by
7 another individual (not the prospective agent) directed by
8 the principal to sign the principal's name on the power of
9 attorney. A power of attorney must be acknowledged before a
10 notary public or other individual authorized by law to take
11 acknowledgments. An agent named in the power of attorney
12 cannot notarize the principal's signature. An acknowledged
13 signature on a power of attorney is presumed to be genuine.

14 VALIDITY. A power of attorney is governed by the law of the
15 jurisdiction indicated in the power of attorney when properly
16 executed. The bill does not affect the validity of the
17 following powers of attorney properly executed in Iowa prior to
18 July 1, 2014: a power of attorney properly executed in Iowa, a
19 power of attorney properly created under the laws of another
20 jurisdiction, and a military power of attorney. The bill also
21 allows the use of a photocopy or electronically transmitted
22 original.

23 MEANING AND EFFECT. The meaning and effect of a power of
24 attorney is determined by the law of the jurisdiction indicated
25 in the power of attorney and if there is no such indication,
26 by the law of the jurisdiction where the power of attorney was
27 executed.

28 CONSERVATOR AND GUARDIAN APPOINTMENTS IN A POWER OF
29 ATTORNEY. A principal can appoint a conservator or guardian in
30 the power of attorney and specify that an agent's authority to
31 act under the power of attorney is suspended during the time a
32 conservator is acting unless provided otherwise in the power of
33 attorney or by the court appointing the conservator. The bill
34 also allows for the appointment of a conservator or guardian on
35 a standby basis pursuant to Code sections 633.560 and 633.591.

1 WHEN EFFECTIVE. The bill provides specific rules as when
2 a power of attorney is effective and provides that unless
3 otherwise provided, the power of attorney is effective when
4 executed.

5 TERMINATION. A power of attorney terminates upon the
6 death or incapacity (if not durable) of the principal, upon
7 revocation by the principal, when the power of attorney
8 specifies a termination date, when the purpose of the power
9 of attorney is accomplished, or if the agent dies, becomes
10 incapacitated, or resigns without a named successor. A general
11 or plenary power of attorney (authorizing the agent to conduct
12 all of the principal's personal business and financial affairs)
13 revokes a general or plenary power of attorney previously
14 executed in Iowa but does not revoke a power of attorney
15 limited to a specific purpose if that purpose is still capable
16 of being fully accomplished by the agent.

17 COAGENTS AND SUCCESSOR AGENTS. The bill provides that a
18 principal may designate two or more persons to act as coagents
19 and specifies certain standards for the actions of coagents. A
20 principal may designate one or more successor agents to act if
21 an agent resigns, dies, becomes incapacitated, is not qualified
22 to serve, or declines to serve.

23 REIMBURSEMENT AND COMPENSATION. Unless provided otherwise
24 in the power of attorney, an agent who is an individual is
25 entitled to reimbursement for expenses incurred on behalf of
26 the principal, but not to compensation. An agent that is a
27 bank or trust company authorized to administer trusts in Iowa
28 may receive compensation if reasonable under the circumstances.

29 AGENT'S ACCEPTANCE. Unless otherwise provided in the
30 power of attorney, a person accepts appointment as an agent
31 by exercising authority, performing duties, or by any other
32 assertion or conduct indicating acceptance.

33 AGENT'S DUTIES. The bill specifies the fiduciary duties
34 an agent owes a principal under a power of attorney and
35 provides that an agent that acts in good faith and with care,

1 competence, and diligence in the best interest of the principal
2 shall not be liable for the agent's actions in certain
3 situations.

4 EXONERATION OF AGENT. The bill provides that a provision
5 in a power of attorney that relieves an agent of liability for
6 breach of duty is binding on the principal except for breaches
7 committed in bad faith, with an improper motive, or with
8 reckless indifference to the purposes of the power of attorney
9 or the best interest of the principal or if the provision was
10 put into the power of attorney as a result of an abuse of a
11 confidential or fiduciary relationship with the principal.

12 JUDICIAL RELIEF. The bill provides that certain persons
13 may petition a court to construe a power of attorney or review
14 an agent's conduct and the court may award reasonable attorney
15 fees and costs to the prevailing party in a proceeding under
16 the bill.

17 AGENT'S LIABILITY. An agent that violates the Code chapter
18 is liable to the principal or the principal's successors in
19 interest for the amount required to restore the value of
20 the principal's property to what it would have been had the
21 violation not occurred and to reimburse the principal or the
22 principal's successors in interest for the attorney fees and
23 costs paid on the agent's behalf.

24 AGENT RESIGNATION. Unless otherwise provided in the
25 power of attorney, an agent may resign by giving notice to
26 the principal and if the principal is incapacitated, to a
27 conservator or guardian, principal's caregiver or other person
28 with sufficient interest in the welfare of the principal, or to
29 the appropriate governmental agency.

30 ACCEPTANCE AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY.
31 The bill protects persons who in good faith accept and rely on
32 an acknowledged power of attorney.

33 LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF
34 ATTORNEY. The bill specifies situations where refusals of a
35 power of attorney are acceptable and unacceptable. A person

1 that refuses to accept an acknowledged power of attorney in
2 violation of the bill is subject to a court order mandating
3 acceptance of the power of attorney and is liable for damages
4 sustained by the principal and reasonable attorney fees and
5 costs. Such an action must be brought within one year of the
6 initial request for acceptance of the power of attorney.

7 OTHER PROVISIONS. The bill includes provisions relating to
8 the application of principles of law and equity and the laws of
9 financial institutions, and remedies under other law.

10 AUTHORITY PROVISIONS. The bill distinguishes between grants
11 of specific authority requiring express language in a power of
12 attorney and grants of general authority.

13 SPECIFIC GRANT OF AUTHORITY. Specific grants of authority
14 require specific language granting certain powers to the agent
15 including powers to create, amend, revoke, or terminate an
16 inter vivos trust; make a gift; create or change rights of
17 survivorship; create or change a beneficiary designation;
18 delegate authority granted under the 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; exercise fiduciary powers that the principal
22 has the authority to delegate; and disclaim property, including
23 a power of appointment.

24 GENERAL GRANT OF AUTHORITY. If a power of attorney grants an
25 agent authority to do all acts that a principal could do, the
26 agent has general authority to act on behalf of the principal
27 with respect to the following subject areas: real property;
28 tangible personal property; stocks and bonds; commodities and
29 options; banks and other financial institutions; the operation
30 of an entity or business; insurance and annuities; estates,
31 trusts, and other beneficial interests; claims and litigation;
32 personal and family maintenance; benefits from governmental
33 programs or civil or military service; retirement plans; taxes;
34 and gifts. The bill contains specific provisions relating to
35 the authority granted to an agent in each of the abovementioned

1 subject areas.

2 CONSTRUCTION OF AUTHORITY. The bill specifies incidental
3 types of authority that accompany all authority (specific and
4 general) granted to an agent under a power of attorney, unless
5 modified in the power of attorney. Such authority includes the
6 power to demand, receive, and obtain other items of value to
7 which a principal is or may be entitled; contract on behalf
8 of a principal; execute, acknowledge, seal, deliver, file,
9 or record any instrument or communication necessary for a
10 transaction; initiate, participate in, submit to alternative
11 dispute resolution, and settle or accept a claim involving
12 the principal or intervene in litigation involving the claim;
13 seek court or other assistance to carry out an act authorized
14 under the power of attorney; engage, compensate, and discharge
15 certain professional advisors; prepare, execute, and file
16 certain documents to safeguard the principal's interests;
17 communicate with government agencies; and access certain
18 communications including electronic communications intended for
19 the principal.

20 STATUTORY FORMS. The bill includes suggested statutory
21 forms for the creation of a power of attorney and for agent
22 certification of facts relating to a power of attorney
23 consistent with the provisions of the Code chapter.

24 MISCELLANEOUS PROVISIONS. The bill provides provisions
25 relating to uniform application and construction, the
26 applicability of the federal Electronic Signatures in Global
27 and National Commerce Act, and the effect of the bill on
28 existing powers of attorney.

29 REPEAL. The bill repeals current Code chapter 633B and makes
30 conforming Code changes.