

Senate File 2168 - Introduced

SENATE FILE 2168
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3116)

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. Missing.

9 c. Detained, including but not limited to an individual
10 incarcerated in a penal system.

11 d. Outside the United States and unable to return.

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

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

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

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

35 12. "*Property*" means anything that may be the subject of

1 ownership, whether real or personal, or legal or equitable, or
2 any interest or right therein.

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

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

8 a. Execute or adopt a tangible symbol.

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

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

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

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

21 This chapter applies to all powers of attorney except for the
22 following:

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

27 2. A power to make health care decisions.

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

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

33 Sec. 6. NEW SECTION. 633B.104 **Durability of power of**
34 **attorney.**

35 A power of attorney created under this chapter is durable

1 unless the power of attorney expressly provides that it is
2 terminated by the incapacity of the principal.

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

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

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

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

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

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

24 *a.* The law of the jurisdiction that determines the meaning
25 and effect of the power of attorney pursuant to section
26 633B.107.

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

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

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

33 The meaning and effect of a power of attorney is determined
34 by the law of the jurisdiction indicated in the power of
35 attorney and, in the absence of an indication of jurisdiction,

1 by the law of the jurisdiction in which the power of attorney
2 was executed.

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

5 1. Under a power of attorney, a principal may nominate
6 a conservator of the principal's estate or guardian of
7 the principal's person for consideration by the court if
8 proceedings for the principal's estate or person are begun
9 after the principal executes the power of attorney. Except
10 for good cause shown or disqualification, the court shall make
11 its appointment in accordance with the principal's most recent
12 nomination. This section does not prohibit an individual
13 from executing a petition for the voluntary appointment of a
14 guardian or conservator on a standby basis pursuant to sections
15 633.560 and 633.591.

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

27 **Sec. 11. NEW SECTION. 633B.109 When power of attorney**
28 **effective.**

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

33 2. If a power of attorney becomes effective upon the
34 occurrence of a future event or contingency, the principal,
35 in the power of attorney, may authorize one or more persons

1 to determine in a writing or other record that the event or
2 contingency has occurred.

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

10 a. A licensed physician or licensed psychologist determines
11 that the principal is incapacitated.

12 b. A licensed attorney at law, a judge, or an appropriate
13 governmental official determines that the principal is
14 incapacitated.

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

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

25 1. A power of attorney terminates when any of the following
26 occur:

27 a. The principal dies.

28 b. The principal becomes incapacitated, if the power of
29 attorney is not durable.

30 c. The principal revokes the power of attorney.

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

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

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

1 power of attorney.

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

4 a. The principal revokes the authority.

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

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

9 d. The power of attorney terminates.

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

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

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

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

34 Sec. 13. NEW SECTION. 633B.111 **Coagents and successor**
35 **agents.**

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

4 a. A power held by coagents shall be exercised by majority
5 action.

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

10 c. If one or more agents resigns or becomes unable to act,
11 the remaining coagents may act.

12 d. If a coagent is unavailable to perform duties because of
13 absence, illness, or other temporary inability to perform, the
14 remaining agents may exercise their authority as if they were
15 the only agents.

16 2. A principal may designate one or more successor agents
17 to act if an agent resigns, dies, becomes incapacitated, is
18 not qualified to serve, or declines to serve. A principal may
19 grant authority to designate one or more successor agents to an
20 agent or other person designated by name, office, or function.
21 Unless the power of attorney otherwise provides, a successor
22 agent:

23 a. Has the same authority as that granted to the original
24 agent.

25 b. Shall not act until all predecessor agents have resigned,
26 died, become incapacitated, are no longer qualified to serve,
27 or have declined to serve.

28 3. Except as otherwise provided in the power of attorney
29 and subsection 4, an agent that does not participate in or
30 conceal a breach of fiduciary duty committed by another agent,
31 including a predecessor agent, is not liable for the actions
32 of the other agent.

33 4. An agent with actual knowledge of a breach or imminent
34 breach of fiduciary duty by another agent shall notify the
35 principal and, if the principal is incapacitated, take any

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

7 Sec. 14. NEW SECTION. **633B.112 Reimbursement and**
8 **compensation of agent.**

9 Unless the power of attorney otherwise provides, an
10 agent who is an individual is entitled to reimbursement of
11 expenses reasonably incurred on behalf of the principal but
12 not to compensation. If a power of attorney does provide
13 for compensation or if the agent is a bank or trust company
14 authorized to administer trusts in Iowa, the compensation must
15 be reasonable under the circumstances.

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

17 Except as otherwise provided in the power of attorney,
18 a person accepts appointment as an agent under a power of
19 attorney by exercising authority or performing duties as
20 an agent or by any other assertion or conduct indicating
21 acceptance.

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

23 1. Notwithstanding provisions in the power of attorney, an
24 agent that has accepted appointment shall act in conformity
25 with all of the following:

26 *a.* In accordance with the principal's reasonable
27 expectations to the extent actually known by the agent and
28 otherwise in the principal's best interest.

29 *b.* In good faith.

30 *c.* Only within the scope of authority granted in the power
31 of attorney.

32 2. Except as otherwise provided in the power of attorney,
33 an agent that has accepted appointment shall do all of the
34 following:

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

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

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

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

8 *e.* Cooperate with a person that has authority to make health
9 care decisions for the principal to carry out the principal's
10 reasonable expectations to the extent actually known by the
11 agent and, otherwise, act in the principal's best interest.

12 *f.* Attempt to preserve the principal's estate plan, to the
13 extent actually known by the agent, if preserving the plan is
14 consistent with the principal's best interest based upon all
15 relevant factors, including all of the following:

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

17 (2) The principal's foreseeable obligations and need for
18 maintenance.

19 (3) Minimization of the principal's taxes, including
20 income, estate, inheritance, generation-skipping transfer, and
21 gift taxes.

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

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

27 4. An agent that acts with care, competence, and diligence
28 for the best interest of the principal is not liable solely
29 because the agent also benefits from the act or has an
30 individual or conflicting interest in relation to the property
31 or affairs of the principal.

32 5. If an agent is selected by the principal because of
33 special skills or expertise possessed by the agent or in
34 reliance on the agent's representation that the agent has
35 special skills or expertise, the special skills or expertise

1 shall be considered in determining whether the agent has acted
2 with care, competence, and diligence under the circumstances.

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

5 7. An agent that exercises authority to delegate to another
6 person the authority granted by the principal or that engages
7 another person on behalf of the principal is not liable for an
8 act, error of judgment, or default of that person if the agent
9 exercises care, competence, and diligence in selecting and
10 monitoring the person.

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

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

25 A provision in a power of attorney relieving an agent of
26 liability for breach of duty is binding on the principal and
27 the principal's successors in interest except to the extent the
28 provision does any of the following:

29 1. Relieves the agent of liability for a breach of duty
30 committed dishonestly, with an improper motive, or with
31 reckless indifference to the purposes of the power of attorney
32 or the best interest of the principal.

33 2. Was included in the power of attorney as a result of
34 an abuse of a confidential or fiduciary relationship with the
35 principal.

1 Sec. 18. NEW SECTION. 633B.116 **Judicial relief.**

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

4 *a.* The principal or the agent.

5 *b.* A guardian, conservator, or other fiduciary acting for
6 the principal.

7 *c.* A person authorized to make health care decisions for the
8 principal.

9 *d.* The principal's spouse, parent, or descendant or an
10 individual who would qualify as a presumptive heir of the
11 principal.

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

16 *f.* A governmental agency having regulatory authority to
17 protect the welfare of the principal.

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

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

21 *i.* A person designated by the principal in the power of
22 attorney.

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

27 3. The costs of an action under this section shall be
28 assessed against the principal or the principal's estate unless
29 the court determines such costs and fees should be assessed
30 against the petitioner or the agent for good cause shown.

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

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

35 1. Restore the value of the principal's property to what it

1 would have been had the violation not occurred.

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

5 Sec. 20. NEW SECTION. 633B.118 **Agent's resignation —**
6 **notice.**

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

11 1. The conservator or guardian, if a conservator or guardian
12 has been appointed for the principal, and any coagent or
13 successor agent.

14 2. If there is no conservator, guardian, or coagent or
15 successor agent, the agent may give notice to any of the
16 following:

17 a. The principal's caregiver.

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

20 c. A governmental agency having regulatory authority to
21 protect the welfare of the principal.

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

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

27 2. A person that in good faith accepts an acknowledged power
28 of attorney without actual knowledge that the signature is not
29 genuine may rely upon the presumption under section 633B.105
30 that the signature is genuine.

31 3. A person that in good faith accepts an acknowledged power
32 of attorney without actual knowledge that the power of attorney
33 is void, invalid, or terminated, that the purported agent's
34 authority is void, invalid, or terminated, or that the agent is
35 exceeding or improperly exercising the agent's authority may

1 rely upon the power of attorney as if the power of attorney
2 were genuine, valid, and still in effect, the agent's authority
3 were genuine, valid, and still in effect, and the agent had not
4 exceeded and had not improperly exercised the authority.

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

8 a. An agent's certification under penalty of perjury of any
9 factual matter concerning the principal, agent, or power of
10 attorney in substantially the same form as set out in section
11 633B.302.

12 b. An English translation of the power of attorney if the
13 power of attorney contains, in whole or in part, language other
14 than English.

15 c. An opinion of agent's counsel as to any matter of law
16 concerning the power of attorney if the person making the
17 request provides the reason for the request in a writing or
18 other record.

19 5. An English translation or an opinion of counsel requested
20 under this section shall be provided at the principal's expense
21 unless the request is made more than seven business days after
22 the power of attorney is presented for acceptance.

23 6. For purposes of this section and section 633B.120, a
24 person who conducts activities through an employee is without
25 actual knowledge of a fact relating to a power of attorney,
26 a principal, or an agent if the employee conducting the
27 transaction involving the power of attorney is without actual
28 knowledge of the fact.

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

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

34 a. A person shall either accept an acknowledged power of
35 attorney or request a certification, a translation, or an

1 opinion of counsel under section 633B.119, subsection 4, no
2 later than seven business days after presentation of the power
3 of attorney for acceptance.

4 *b.* If a person requests a certification, a translation, or
5 an opinion of counsel under section 633B.199, subsection 4, the
6 person shall accept the power of attorney no later than five
7 business days after receipt of the certification, translation,
8 or opinion of counsel.

9 *c.* A person shall not require an additional or different
10 form of power of attorney for authority granted in the power
11 of attorney presented.

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

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

16 *b.* Engaging in a transaction with the agent or the principal
17 in the same circumstances would be inconsistent with federal
18 law.

19 *c.* The person has actual knowledge of the termination of the
20 agent's authority or of the power of attorney before exercise
21 of the power.

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

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

30 *f.* The person makes, or has actual knowledge that another
31 person has made, a report to the department of human services
32 stating a good-faith belief that the principal may be subject
33 to physical or financial abuse, neglect, exploitation, or
34 abandonment by the agent or a person acting for or with the
35 agent.

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

4 a. A court order mandating acceptance of the power of
5 attorney.

6 b. Liability for damages sustained by the principal for
7 reasonable attorney fees and costs incurred in any action or
8 proceeding that confirms the validity of the power of attorney
9 or mandates acceptance of the power of attorney, provided that
10 any such action must be brought within one year of the initial
11 request for acceptance of the power of attorney.

12 Sec. 23. NEW SECTION. 633B.121 Principles of law and
13 equity.

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

16 Sec. 24. NEW SECTION. 633B.122 Laws applicable to financial
17 institutions and entities.

18 This chapter does not supersede any other law applicable to
19 financial institutions or other entities, and the other law
20 controls if inconsistent with this chapter.

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

22 The remedies under this chapter are not exclusive and do not
23 abrogate any right or remedy under the law of this state other
24 than this chapter.

25 Sec. 26. NEW SECTION. 633B.201 Authority — specific and
26 general.

27 1. An agent under a power of attorney may do any of the
28 following on behalf of the principal or with the principal's
29 property only if the power of attorney expressly grants the
30 agent the authority and the exercise of the authority is not
31 otherwise prohibited by another agreement or instrument to
32 which the authority or property is subject:

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

34 b. Make a gift.

35 c. Create or change rights of survivorship.

1 *d.* Create or change a beneficiary designation.

2 *e.* Delegate authority granted under the power of attorney.

3 *f.* Waive the principal's right to be a beneficiary of a
4 joint and survivor annuity, including but not limited to a
5 survivor benefit under a retirement plan.

6 *g.* Exercise fiduciary powers that the principal has
7 authority to delegate.

8 *h.* Disclaim property, including but not limited to a power
9 of appointment.

10 2. Notwithstanding a grant of authority to do an act
11 described in subsection 1, unless the power of attorney
12 otherwise provides, an agent that is not an ancestor, spouse,
13 or descendant of the principal shall not exercise authority
14 under a power of attorney to create in the agent, or in an
15 individual to whom the agent owes a legal obligation of
16 support, an interest in the principal's property, whether
17 by gift, right of survivorship, beneficiary designation,
18 disclaimer, or otherwise.

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

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

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

28 6. Authority granted in a power of attorney is exercisable
29 with respect to property that the principal has when the power
30 of attorney is executed or acquires later, whether or not
31 the property is located in this state and whether or not the
32 authority is exercised or the power of attorney is executed in
33 this state.

34 7. An act performed by an agent pursuant to a power of
35 attorney has the same effect and inures to the benefit of and

1 binds the principal and the principal's successors in interest
2 as if the principal had performed the act.

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

4 1. An agent has authority described in this chapter if the
5 power of attorney refers to general authority with respect
6 to the descriptive term for the subjects stated in sections
7 633B.204 through 633B.217 or cites the section in which the
8 authority is described.

9 2. A reference in a power of attorney to general authority
10 with respect to the descriptive term for a subject stated in
11 sections 633B.204 through 633B.217 or a citation to a section
12 in sections 633B.204 through 633B.217 incorporates the entire
13 section as if it were set out in full in the power of attorney.

14 3. A principal may modify authority incorporated by
15 reference.

16 Sec. 28. NEW SECTION. **633B.203 Construction of authority**
17 **generally.**

18 Except as otherwise provided in the power of attorney, by
19 executing a power of attorney that incorporates by reference a
20 subject described in sections 633B.204 through 633B.217 or that
21 grants an agent authority to do all acts that a principal could
22 do pursuant to section 633B.201, subsection 3, a principal
23 authorizes the agent, with respect to that subject, to do all
24 of the following:

25 1. Demand, receive, and obtain by litigation or otherwise,
26 money or another thing of value to which the principal is,
27 may become, or claims to be entitled, and conserve, invest,
28 disburse, or use anything so received or obtained for the
29 purposes intended.

30 2. Contract in any manner with any person, on terms
31 agreeable to the agent, to accomplish a purpose of a
32 transaction and perform, rescind, cancel, terminate, reform,
33 restate, release, or modify the contract or another contract
34 made by or on behalf of the principal.

35 3. Execute, acknowledge, seal, deliver, file, or record

1 any instrument or communication the agent considers desirable
2 to accomplish a purpose of a transaction, including but not
3 limited to creating at any time a schedule listing some or all
4 of the principal's property and attaching the instrument of
5 communication to the power of attorney.

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

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

13 6. Engage, compensate, and discharge an attorney,
14 accountant, discretionary investment manager, expert witness,
15 or other advisor.

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

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

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

25 10. Do any lawful act with respect to the subject and all
26 property related to the subject.

27 Sec. 29. NEW SECTION. 633B.204 **Real property.**

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

32 1. Demand, buy, lease, receive, accept as a gift or as
33 security for an extension of credit, or otherwise acquire or
34 reject an interest in real property or a right incident to real
35 property.

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

10 3. Pledge or mortgage an interest in real property or right
11 incident to real property as security to borrow money or pay,
12 renew, or extend the time of payment of a debt of the principal
13 or a debt guaranteed by the principal.

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

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

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

23 b. Obtaining or regaining possession of or protecting the
24 interest or right by litigation or otherwise.

25 c. Paying, assessing, compromising, or contesting taxes or
26 assessments or applying for and receiving refunds in connection
27 with them.

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

30 6. Use, develop, alter, replace, remove, erect, or install
31 structures or other improvements upon real property in or
32 incident to which the principal has, or claims to have, an
33 interest or right.

34 7. Participate in a reorganization with respect to real
35 property or an entity that owns an interest in or a right

1 incident to real property and receive, hold, and act with
2 respect to stocks and bonds or other property received in
3 a plan of reorganization, including by doing any of the
4 following:

5 a. By selling or otherwise disposing of the stocks, bonds,
6 or other property.

7 b. By exercising or selling an option, right of conversion,
8 or similar right.

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

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

12 9. Dedicate to public use, with or without consideration,
13 easements or other real property in which the principal has,
14 or claims to have, an interest.

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

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

20 1. Demand, buy, receive, accept as a gift or as security
21 for an extension of credit, or otherwise acquire or reject
22 ownership or possession of tangible personal property or an
23 interest in tangible personal property.

24 2. Sell; exchange; convey with or without covenants,
25 representations, or warranties; quitclaim; release; surrender;
26 create a security interest in; grant options concerning; lease;
27 sublease; or, otherwise dispose of tangible personal property
28 or an interest in tangible personal property.

29 3. Grant a security interest in tangible personal property
30 or an interest in tangible personal property as security to
31 borrow money or pay, renew, or extend the time of payment of a
32 debt of the principal or a debt guaranteed by the principal.

33 4. Release, assign, satisfy, or enforce by litigation or
34 otherwise, a security interest, lien, or other claim on behalf
35 of the principal, with respect to tangible personal property or

1 an interest in tangible personal property.

2 5. Manage or conserve tangible personal property or an
3 interest in tangible personal property on behalf of the
4 principal, including by doing all of the following:

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

6 b. Obtaining or regaining possession of or protecting the
7 property or interest, by litigation or otherwise.

8 c. Paying, assessing, compromising, or contesting taxes or
9 assessments or applying for and receiving refunds in connection
10 with taxes or assessments.

11 d. Moving the property from place to place.

12 e. Storing the property for hire or on a gratuitous
13 bailment.

14 f. Using and making repairs, alterations, or improvements to
15 the property.

16 6. Change the form of title of an interest in tangible
17 personal property.

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

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

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

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

26 3. Pledge stocks and bonds as security to borrow, pay,
27 renew, or extend the time of payment of a debt of the
28 principal.

29 4. Receive certificates and other evidence of ownership
30 with respect to stocks and bonds.

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

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

35 Unless the power of attorney otherwise provides and subject

1 to section 633B.201, language in a power of attorney granting
2 general authority with respect to commodities and options
3 authorizes the agent to do all of the following:

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

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

9 Sec. 33. NEW SECTION. **633B.208 Banks and other financial**
10 **institutions.**

11 Unless the power of attorney otherwise provides and subject
12 to section 633B.201, language in a power of attorney granting
13 general authority with respect to banks and other financial
14 institutions authorizes the agent to do all of the following:

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

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

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

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

27 5. Receive statements of account, vouchers, notices, and
28 similar documents from a financial institution and act with
29 respect to them.

30 6. Enter a safe deposit box or vault and withdraw or add to
31 the contents.

32 7. Borrow money and pledge as security personal property
33 of the principal necessary to borrow money or pay, renew, or
34 extend the time of payment of a debt of the principal or a debt
35 guaranteed by the principal.

1 8. Make, assign, draw, endorse, discount, guarantee,
2 and negotiate promissory notes, checks, drafts, and other
3 negotiable or nonnegotiable paper of the principal or payable
4 to the principal or the principal's order, transfer money,
5 receive the cash or other proceeds of those transactions, and
6 accept a draft drawn by a person upon the principal and pay
7 the promissory note, check, draft, or other negotiable or
8 nonnegotiable paper when due.

9 9. Receive for the principal and act upon a sight draft,
10 warehouse receipt, or other document of title whether tangible
11 or electronic, or any other negotiable or nonnegotiable
12 instrument.

13 10. Apply for, receive, and use letters of credit, credit
14 and debit cards, electronic transaction authorizations, and
15 traveler's checks from a financial institution and give an
16 indemnity or other agreement in connection with letters of
17 credit.

18 11. Consent to an extension of the time of payment with
19 respect to commercial paper or a financial transaction with a
20 financial institution.

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

23 Subject to the terms of a document or an agreement governing
24 an entity or business or an entity or business ownership
25 interest, and subject to section 633B.201, and unless the
26 power of attorney otherwise provides, language in a power of
27 attorney granting general authority with respect to operation
28 of an entity or business authorizes the agent to do all of the
29 following:

30 1. Operate, buy, sell, enlarge, reduce, or terminate an
31 ownership interest.

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

35 3. Enforce the terms of an ownership agreement.

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

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

9 6. Initiate, participate in, submit to alternative dispute
10 resolution, settle, oppose, or propose or accept a compromise
11 with respect to litigation to which the principal is a party
12 concerning stocks and bonds.

13 7. Do all of the following with respect to an entity or
14 business owned solely by the principal:

15 a. Continue, modify, renegotiate, extend, and terminate a
16 contract made by or on behalf of the principal with respect
17 to the entity or business before execution of the power of
18 attorney.

19 b. Determine all of the following:

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

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

22 (3) The methods of manufacturing, selling, merchandising,
23 financing, accounting, and advertising employed in the
24 operation of the entity or business.

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

27 (5) The mode of engaging, compensating, and dealing with
28 the employees, accountants, attorneys, or other advisors of the
29 entity or business.

30 c. Change the name or form of organization under which the
31 entity or business is operated and enter into an ownership
32 agreement with other persons to take over all or part of the
33 operation of the entity or business.

34 d. Demand and receive money due or claimed by the principal
35 or on the principal's behalf in the operation of the entity or

1 business and control and disburse the money in the operation of
2 the entity or business.

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

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

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

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

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

13 13. Pay, compromise, or contest taxes, assessments, fines,
14 or penalties and perform any other act to protect the principal
15 from illegal or unnecessary taxation, assessments, fines, or
16 penalties with respect to an entity or business, including but
17 not limited to attempts to recover, in any manner permitted by
18 law, money paid before or after the execution of the power of
19 attorney.

20 Sec. 35. NEW SECTION. 633B.210 Insurance and annuities.

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 insurance and annuities
24 authorizes the agent to do all of the following:

25 1. Continue, pay the premium or make a contribution on,
26 modify, exchange, rescind, release, or terminate a contract
27 procured by or on behalf of the principal which insures or
28 provides an annuity to either the principal or another person
29 whether or not the principal is a beneficiary under the
30 contract.

31 2. Procure new, different, and additional contracts of
32 insurance and annuities for the principal and the principal's
33 spouse, children, and other dependents, and select the amount,
34 type of insurance or annuity, and mode of payment.

35 3. Pay the premium or make a contribution on, modify,

1 exchange, rescind, release, or terminate a contract of
2 insurance or annuity procured by the agent.

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

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

7 6. Exercise an election.

8 7. Exercise investment powers available under a contract of
9 insurance or annuity.

10 8. Change the manner of paying premiums on a contract of
11 insurance or annuity.

12 9. Change or convert the type of insurance or annuity with
13 respect to which the principal has or claims to have authority
14 described in this section.

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

18 11. Collect, sell, assign, hypothecate, borrow against, or
19 pledge the interest of the principal in a contract of insurance
20 or annuity.

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

23 13. Pay, from proceeds or otherwise, compromise or contest,
24 and apply for refunds in connection with a tax or assessment
25 levied by a taxing authority with respect to a contract of
26 insurance or annuity or its proceeds or liability accruing by
27 reason of the tax or assessment.

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

30 1. In this section, "*estate, trust, or other beneficial*
31 *interest*" means a trust, probate estate, guardianship,
32 conservatorship, escrow, or custodianship, or a fund from which
33 the principal is, may become, or claims to be, entitled to a
34 share or payment.

35 2. Unless the power of attorney otherwise provides,

1 language in a power of attorney granting general authority with
2 respect to estates, trusts, and other beneficial interests
3 authorizes the agent to do all of the following:

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

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

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

13 *d.* Initiate, participate in, submit to alternative dispute
14 resolution, settle, oppose, or propose or accept a compromise
15 with respect to litigation to ascertain the meaning, validity,
16 or effect of a deed, will, declaration of trust, or other
17 instrument or transaction affecting the interest of the
18 principal.

19 *e.* Initiate, participate in, submit to alternative dispute
20 resolution, settle, oppose, or propose or accept a compromise
21 with respect to litigation to remove, substitute, or surcharge
22 a fiduciary.

23 *f.* Conserve, invest, disburse, or use any assets received
24 for an authorized purpose.

25 *g.* Transfer an interest of the principal in real property,
26 stocks and bonds, accounts with financial institutions or
27 securities intermediaries, insurance, annuities, and other
28 property to the trustee of a revocable trust created by the
29 principal as settlor.

30 *h.* Reject, renounce, disclaim, release, or consent to a
31 reduction in or modification of a share in or payment from an
32 estate, trust, or other beneficial interest.

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

34 Unless the power of attorney otherwise provides and subject
35 to section 633B.201, language in a power of attorney granting

1 general authority with respect to claims and litigation
2 authorizes the agent to do all of the following:

3 1. Assert and maintain before a court or administrative
4 agency a claim, claim for relief, cause of action,
5 counterclaim, offset, recoupment, or defense, including but
6 not limited to an action to recover property or other thing of
7 value, recover damages sustained by the principal, eliminate
8 or modify tax liability, or seek an injunction, specific
9 performance, or other relief.

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

12 3. Seek an attachment, garnishment, or other preliminary,
13 provisional, or intermediate relief and use an available
14 procedure to effect or satisfy a judgment, order, or decree.

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

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

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

31 7. Act for the principal with respect to bankruptcy or
32 insolvency, whether voluntary or involuntary, concerning
33 the principal or some other person, or with respect to
34 a reorganization, receivership, or application for the
35 appointment of a receiver or trustee which affects an interest

1 of the principal in property or other thing of value.

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

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

6 Sec. 38. NEW SECTION. 633B.213 **Personal and family**
7 **maintenance.**

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

12 a. Perform the acts necessary to maintain the customary
13 standard of living of the principal, the principal's spouse,
14 and the following individuals, whether living when the power of
15 attorney is executed or later born:

16 (1) The principal's minor children.

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

20 (3) The principal's parents or the parents of the
21 principal's spouse, if the principal had established a pattern
22 of such payments.

23 (4) Any other individuals legally entitled to be supported
24 by the principal.

25 b. Make periodic payments of child support and other family
26 maintenance required by a court or governmental agency or an
27 agreement to which the principal is a party.

28 c. Provide living quarters for the individuals described in
29 paragraph "a" by any of the following:

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

31 (2) Paying the operating costs, including but not limited
32 to interest, amortization payments, repairs, improvements, and
33 taxes, for premises owned by the principal or occupied by those
34 individuals.

35 d. Provide funds for shelter, clothing, food, appropriate

1 education, including postsecondary and vocational education,
2 and other current living costs for the individuals described
3 in paragraph "a" to enable those individuals to maintain their
4 customary standard of living.

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

7 f. Act as the principal's personal representative pursuant
8 to the federal Health Insurance Portability and Accountability
9 Act of 1996, Pub. L. No. 104-191, including amendments thereto
10 and regulations promulgated thereunder, in making decisions
11 related to past, present, or future payments for the provision
12 of health care consented to by the principal or anyone
13 authorized under the law of this state to consent to health
14 care on behalf of the principal.

15 g. Continue any provision made by the principal for
16 automobiles or other means of transportation, including
17 registering, licensing, insuring, and replacing them, for the
18 individuals described in paragraph "a".

19 h. Maintain credit and debit accounts for the convenience
20 of the individuals described in paragraph "a" and open new
21 accounts.

22 i. Continue payments or contributions incidental to the
23 membership or affiliation of the principal in a religious
24 institution, club, society, order, or other organization.

25 2. Authority with respect to personal and family
26 maintenance is neither dependent upon, nor limited by,
27 authority that an agent may or may not have with respect to
28 gifts under this chapter.

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

31 1. In this section, "*benefits from governmental programs*
32 *or civil or military service*" means any benefit, program,
33 or assistance provided under a statute, rule, or regulation
34 relating to but not limited to social security, Medicare, or
35 Medicaid.

1 2. Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority
3 with respect to benefits from governmental programs or civil
4 or military service authorizes the agent to do all of the
5 following:

6 a. Execute vouchers in the name of the principal for
7 allowances and reimbursements payable by the United States, a
8 foreign government, or a state or subdivision of a state to
9 the principal, including but not limited to allowances and
10 reimbursements for transportation of the individuals described
11 in section 633B.213, subsection 1, paragraph "a", and for
12 shipment of the household effects of such individuals.

13 b. Take possession and order the removal and shipment of
14 property of the principal from a post, warehouse, depot, dock,
15 or other place of storage or safekeeping, either governmental
16 or private, and execute and deliver a release, voucher,
17 receipt, bill of lading, shipping ticket, certificate, or other
18 instrument for that purpose.

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

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

24 e. Initiate, participate in, submit to alternative dispute
25 resolution, settle, oppose, or propose or accept a compromise
26 with respect to litigation concerning any benefit or assistance
27 the principal may be entitled to receive under a statute, rule,
28 or regulation.

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

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

33 1. In this section, "retirement plan" means a plan or
34 account created by an employer, the principal, or another
35 individual to provide retirement benefits or deferred

1 compensation in which the principal is a participant,
2 beneficiary, or owner, including but not limited to a plan or
3 account under the following sections of the Internal Revenue
4 Code:

5 *a.* An individual retirement account in accordance with
6 section 408.

7 *b.* A Roth individual retirement account established under
8 section 408A.

9 *c.* A deemed individual retirement account under section
10 408(q).

11 *d.* An annuity or mutual fund custodial account under section
12 403(b).

13 *e.* A pension, profit-sharing, stock bonus, or other
14 retirement plan qualified under section 401(a).

15 *f.* An eligible deferred compensation plan under section
16 457(b).

17 *g.* A nonqualified deferred compensation plan under section
18 409A.

19 2. Unless the power of attorney otherwise provides,
20 language in a power of attorney granting general authority with
21 respect to retirement plans authorizes the agent to do all of
22 the following:

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

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

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

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

29 *e.* Exercise investment powers available under a retirement
30 plan.

31 *f.* Borrow from, sell assets to, or purchase assets from a
32 retirement plan.

33 Sec. 41. NEW SECTION. 633B.216 Taxes.

34 Unless the power of attorney otherwise provides, language in
35 a power of attorney granting general authority with respect to

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

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

13 2. Pay taxes due, collect refunds, post bonds, receive
14 confidential information, and contest deficiencies determined
15 by the Internal Revenue Service or other taxing authority.

16 3. Exercise any election available to the principal under
17 federal, state, local, or foreign tax law.

18 4. Act for the principal in all tax matters for all periods
19 before the Internal Revenue Service or any other taxing
20 authority.

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

22 1. In this section, a gift "*for the benefit of*" a person
23 includes a gift to a trust, an account under a uniform
24 transfers to minors Act, and a qualified state tuition program
25 exempt from taxation pursuant to section 529 of the Internal
26 Revenue Code.

27 2. Unless the power of attorney otherwise provides,
28 language in a power of attorney granting general authority with
29 respect to gifts authorizes the agent only to do all of the
30 following:

31 a. Make a gift of any of the principal's property outright
32 to, or for the benefit of, a person, including but not limited
33 to by the exercise of a presently exercisable general power
34 of appointment held by the principal, in an amount per donee
35 not to exceed the annual dollar limits of the federal gift

1 tax exclusion under section 2503(b) of the Internal Revenue
2 Code without regard to whether the federal gift tax exclusion
3 applies to the gift or if the principal's spouse agrees
4 to consent to a split gift pursuant to section 2513 of the
5 Internal Revenue Code in an amount per donee not to exceed
6 twice the annual federal gift tax exclusion limit.

7 *b.* Consent to the splitting of a gift made by the
8 principal's spouse pursuant to section 2513 of the Internal
9 Revenue Code in an amount per donee not to exceed the aggregate
10 annual gift tax exclusions for both spouses.

11 3. An agent may make a gift of the principal's property
12 only as the agent determines is consistent with the principal's
13 objectives if actually known by the agent and, if unknown,
14 as the agent determines is consistent with the principal's
15 best interest based on all relevant factors, including but not
16 limited to all of the following:

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

18 *b.* The principal's foreseeable obligations and need for
19 maintenance.

20 *c.* The minimization of taxes, including but not limited to
21 income, estate, inheritance, generation-skipping transfer, and
22 gift taxes.

23 *d.* Eligibility for a benefit, a program, or assistance under
24 a statute, rule, or regulation.

25 *e.* The principal's personal history of making or joining in
26 making gifts.

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

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

31 IOWA STATUTORY POWER OF ATTORNEY FORM

32 1. **POWER OF ATTORNEY**

33 This power of attorney authorizes another person (your
34 agent) to make decisions concerning your property for you (the
35 principal). Your agent will be able to make decisions and act

1 with respect to your property (including but not limited to
2 your money) whether or not you are able to act for yourself.
3 The meaning of authority over subjects listed on this form is
4 explained in the Iowa Uniform Power of Attorney Act, Iowa Code
5 chapter 633B.

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

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

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

14 This form provides for designation of one agent. If you
15 wish to name more than one agent, you may name a coagent in the
16 optional Special Instructions. Coagents must act by majority
17 rule unless you provide otherwise in the optional Special
18 Instructions.

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

22 This power of attorney becomes effective immediately upon
23 signature and acknowledgment unless you state otherwise in the
24 optional Special Instructions.

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

28 DESIGNATION OF AGENT

29 I _____ (name of principal) name the
30 following person as my agent:

31 Name of Agent _____

32 Agent's Address _____

33 Agent's Telephone Number _____

34 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

35 If my agent is unable or unwilling to act for me, I name as

1 my successor agent:

2 Name of Successor Agent _____

3 Successor Agent's Address _____

4 Successor Agent's Telephone Number _____

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

7 Name of Second Successor Agent _____

8 Second Successor Agent's Address _____

9 Second Successor Agent's Telephone Number _____

10 GRANT OF GENERAL AUTHORITY

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

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

- 18 Real Property
- 19 Tangible Personal Property
- 20 Stocks and Bonds
- 21 Commodities and Options
- 22 Banks and Other Financial Institutions
- 23 Operation of Entity or Business
- 24 Insurance and Annuities
- 25 Estates, Trusts, and Other Beneficial Interests
- 26 Claims and Litigation
- 27 Personal and Family Maintenance
- 28 Benefits from Governmental Programs or Civil or Military
- 29 Service
- 30 Retirement Plans
- 31 Taxes
- 32 All Preceding Subjects

33 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

34 My agent shall not do any of the following specific acts for
35 me unless I have initialed the specific authority listed below:

1 (Caution: Granting any of the following will give your agent
2 the authority to take actions that could significantly reduce
3 your property or change how your property is distributed at
4 your death. Initial only the specific authority you WANT to
5 give your agent.)

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

8 ___ Agree to the amendment or termination of any other inter
9 vivos trust.

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

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

16 ___ Any such gift must be approved in writing by
17 _____; or

18 ___ No third party approval is needed.

19 ___ Authorize another person to exercise the authority
20 granted under this power of attorney.

21 ___ Waive the principal's right to be a beneficiary of a
22 joint and survivor annuity, including a survivor benefit under
23 a retirement plan.

24 ___ Exercise fiduciary powers that the principal has
25 authority to delegate.

26 ___ Disclaim or refuse an interest in property, including a
27 power of appointment.

28 LIMITATION ON AGENT'S AUTHORITY

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

33 SPECIAL INSTRUCTIONS (OPTIONAL)

34 You may give special instructions on the following lines:
35 _____

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____

11 _____ shall have the authority to
 12 request an accounting of any agent.

13 EFFECTIVE DATE

14 This power of attorney is effective immediately upon
 15 signature and acknowledgment unless I have stated otherwise in
 16 the optional Special Instructions.

17 NOMINATION OF CONSERVATOR AND GUARDIAN (OPTIONAL)

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

21 Name of Nominee for Conservator of My Estate _____
 22 Nominee's Address _____
 23 Nominee's Telephone Number _____
 24 Name of Nominee for Guardian of My Person _____
 25 Nominee's Address _____
 26 Nominee's Telephone Number _____

27 RELIANCE ON THIS POWER OF ATTORNEY

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

31 SIGNATURE AND ACKNOWLEDGMENT

32 _____
 33 Your Signature Date
 34 _____
 35 Your Name Printed

1 _____
 2 _____
 3 Your Address
 4 _____
 5 Your Telephone Number
 6 State of _____
 7 County of _____
 8 This document was acknowledged before me on _____
 9 (date), by _____ (name of principal)
 10 _____ (Seal, if any)
 11 Signature of Notary
 12 My commission expires _____
 13 This document prepared by
 14 _____
 15 _____

2. IMPORTANT INFORMATION FOR AGENT

AGENT'S DUTIES

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

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

26 Act in good faith.

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

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

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

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

1 Act loyally for the principal's benefit.

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

4 Act with care, competence, and diligence.

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

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

12 Attempt to preserve the principal's estate plan if you
13 know the plan and preserving the plan is consistent with the
14 principal's best interest.

15 TERMINATION OF AGENT'S AUTHORITY

16 You must stop acting on behalf of the principal if you learn
17 of any event that terminates this power of attorney or your
18 authority under this power of attorney. Events that terminate
19 a power of attorney or your authority to act under a power of
20 attorney include any of the following:

21 Death of the principal.

22 The principal's revocation of the power of attorney or your
23 authority.

24 The occurrence of a termination event stated in the power of
25 attorney.

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

27 If you are married to the principal, a legal action is
28 filed with a court to end your marriage, or for your legal
29 separation, unless the Special Instructions in this power of
30 attorney state that such an action will not terminate your
31 authority.

32 LIABILITY OF AGENT

33 The meaning of the authority granted to you is defined in the
34 Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B. If
35 you violate the Iowa Uniform Power of Attorney Act, Iowa Code

1 chapter 633B, or act outside the authority granted, you may be
2 liable for any damages caused by your violation.

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

5 Sec. 44. NEW SECTION. 633B.302 Agent's certification —
6 optional form.

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

9 IOWA STATUTORY POWER OF ATTORNEY AGENT'S CERTIFICATION FORM
10 AGENT'S CERTIFICATION OF VALIDITY OF POWER OF ATTORNEY AND
11 AGENT'S AUTHORITY

12 State of _____

13 County of _____

14 I, _____ (name of agent), certify
15 under penalty of perjury that _____
16 (name of principal) granted me authority as an agent
17 or successor agent in a power of attorney dated
18 _____.

19 I further certify all of the following to my knowledge:

20 The principal is alive and has not revoked the power of
21 attorney or the Power of Attorney and my authority to act under
22 the Power of Attorney have not terminated.

23 If the power of attorney was drafted to become effective
24 upon the happening of an event or contingency, the event or
25 contingency has occurred.

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

28 _____
29 _____
30 _____.

31 (Insert other relevant statements)

32 SIGNATURE AND ACKNOWLEDGMENT

33 _____

34 Agent's Signature

Date

35 _____

1 Agent's Name Printed

2 _____

3 _____

4 Agent's Address

5 _____

6 Agent's Telephone Number

7 This document was acknowledged before me on _____

8 (date), by _____ (name of agent)

9 _____ (Seal, if any)

10 Signature of Notary

11 My commission expires _____

12 This document prepared by

13 _____

14 _____

15 **Sec. 45. NEW SECTION. 633B.401 Uniformity of application**
16 **and construction.**

17 In applying and construing this chapter, consideration shall
18 be given to the need to promote uniformity of the law with
19 respect to the subject matter of this chapter among states that
20 enact the uniform power of attorney Act.

21 **Sec. 46. NEW SECTION. 633B.402 Relation to Electronic**
22 **Signatures in Global and National Commerce Act.**

23 This chapter modifies, limits, and supersedes the federal
24 Electronic Signatures in Global and National Commerce Act, 15
25 U.S.C. §7001 et seq., but does not modify, limit, or supersede
26 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
27 electronic delivery of any of the notices described in section
28 103(b) of that Act, 15 U.S.C. §7003(b).

29 **Sec. 47. NEW SECTION. 633B.403 Effect on existing powers**
30 **of attorney.**

31 1. This chapter applies to a power of attorney, regardless
32 of whether the power of attorney was created before, on, or
33 after July 1, 2014.

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

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

8 Sec. 48. REPEAL. Sections 633B.1 and 633B.2, Code 2014,
9 are repealed.

10

EXPLANATION

11

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

12

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

15 Current Code chapter 633B relating to powers of attorney
16 contains provisions relating to situations in which a power
17 of attorney is not affected by the death or disability of the
18 principal and provides notice provisions for the revocation or
19 termination of a power of attorney.

20 The bill repeals current Code chapter 633B and replaces
21 it with the Iowa uniform power of attorney Act, based on
22 the uniform power of attorney Act, which provides specific
23 provisions relating to the creation, duties, responsibilities,
24 and powers of an agent designated in the power of attorney
25 document to manage the principal's finances and property. The
26 bill also provides remedies for abuses committed by an agent
27 under a power of attorney. The bill defines "agent" to mean a
28 person who is granted authority to act for a principal under a
29 power of attorney, whether referred to as an agent, attorney
30 in fact, or otherwise in the power of attorney document, and
31 includes an original agent, coagent, successor agent, and a
32 person to which an agent's authority is delegated; "person"
33 means an individual, corporation, business trust, estate,
34 trust, partnership, limited liability company, association,
35 joint venture, public corporation, government or governmental

1 subdivision, agency, or instrumentality, or any other legal
2 or commercial entity; and "principal" means an individual who
3 grants authority to an agent in a power of attorney.

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

6 APPLICABILITY. The bill applies to all powers of attorney
7 other than a durable power of attorney for health care (see
8 Code chapter 144B), a voting proxy, a power created on a
9 governmental form for a governmental purpose, and a power
10 coupled with an interest of the agent such as a creditor's
11 right to protect title in pledged collateral.

12 DURABILITY. A power of attorney is durable unless the power
13 of attorney expressly provides that it is terminated by the
14 principal's incapacity.

15 EXECUTION. A power of attorney must be signed by the
16 principal or in the principal's conscious presence by
17 another individual (not the prospective agent) directed by
18 the principal to sign the principal's name on the power of
19 attorney. A power of attorney must be acknowledged before a
20 notary public or other individual authorized by law to take
21 acknowledgments. An agent named in the power of attorney
22 cannot notarize the principal's signature. An acknowledged
23 signature on a power of attorney is presumed to be genuine.

24 VALIDITY. A power of attorney is governed by the law of the
25 jurisdiction indicated in the power of attorney when properly
26 executed. The bill does not affect the validity of the
27 following powers of attorney properly executed in Iowa prior to
28 July 1, 2014: a power of attorney properly executed in Iowa, a
29 power of attorney properly created under the laws of another
30 jurisdiction, and a military power of attorney. The bill also
31 allows the use of a photocopy or electronically transmitted
32 original.

33 MEANING AND EFFECT. The meaning and effect of a power of
34 attorney is determined by the law of the jurisdiction indicated
35 in the power of attorney and if there is no such indication,

1 by the law of the jurisdiction where the power of attorney was
2 executed.

3 CONSERVATOR AND GUARDIAN APPOINTMENTS IN A POWER OF
4 ATTORNEY. A principal can appoint a conservator or guardian in
5 the power of attorney and specify that an agent's authority to
6 act under the power of attorney is suspended during the time a
7 conservator is acting unless provided otherwise in the power of
8 attorney or by the court appointing the conservator. The bill
9 also allows for the appointment of a conservator or guardian on
10 a standby basis pursuant to Code sections 633.560 and 633.591.

11 WHEN EFFECTIVE. The bill provides specific rules as when
12 a power of attorney is effective and provides that unless
13 otherwise provided, the power of attorney is effective when
14 executed.

15 TERMINATION. A power of attorney terminates upon the
16 death or incapacity (if not durable) of the principal, upon
17 revocation by the principal, when the power of attorney
18 specifies a termination date, when the purpose of the power
19 of attorney is accomplished, or if the agent dies, becomes
20 incapacitated, or resigns without a named successor. A general
21 or plenary power of attorney (authorizing the agent to conduct
22 all of the principal's personal business and financial affairs)
23 revokes a general or plenary power of attorney previously
24 executed in Iowa but does not revoke a power of attorney
25 limited to a specific purpose if that purpose is still capable
26 of being fully accomplished by the agent.

27 COAGENTS AND SUCCESSOR AGENTS. A principal may designate
28 two or more persons to act as coagents and specifies certain
29 standards for the actions of coagents. A principal may
30 designate one or more successor agents to act if an agent
31 resigns, dies, becomes incapacitated, is not qualified to
32 serve, or declines to serve.

33 REIMBURSEMENT AND COMPENSATION. Unless provided otherwise
34 in the power of attorney, an agent who is an individual is
35 entitled to reimbursement for expenses incurred on behalf of

1 the principal, but not to compensation. An agent that is a
2 bank or trust company authorized to administer trusts in Iowa
3 may receive compensation if reasonable under the circumstances.

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

8 AGENT'S DUTIES. The bill specifies the fiduciary duties
9 an agent owes a principal under a power of attorney and
10 provides that an agent that acts in good faith and with care,
11 competence, and diligence in the best interest of the principal
12 shall not be liable for the agent's actions in certain
13 situations.

14 EXONERATION OF AGENT. The bill provides that a provision
15 in a power of attorney that relieves an agent of liability for
16 breach of duty is binding on the principal except for breaches
17 committed dishonestly, with an improper motive, or with
18 reckless indifference to the purposes of the power of attorney
19 or the best interest of the principal or if the provision was
20 put into the power of attorney as a result of an abuse of a
21 confidential or fiduciary relationship with the principal.

22 JUDICIAL RELIEF. The bill provides that certain persons may
23 petition a court to construe a power of attorney or review an
24 agent's conduct and the costs of the court action shall be paid
25 by the principal and the principal's estate unless, for good
26 cause shown, the costs may be assessed against the petitioner
27 or the agent.

28 AGENT'S LIABILITY. An agent that violates the Code chapter
29 is liable to the principal or the principal's successors in
30 interest for the amount required to restore the value of
31 the principal's property to what it would have been had the
32 violation not occurred and to reimburse the principal or the
33 principal's successors in interest for the attorney fees and
34 costs paid on the agent's behalf.

35 AGENT RESIGNATION. Unless otherwise provided in the

1 power of attorney, an agent may resign by giving notice to
2 the principal and if the principal is incapacitated, to a
3 conservator or guardian, principal's caregiver or other person
4 with sufficient interest in the welfare of the principal, or to
5 the appropriate governmental agency.

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

9 LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF
10 ATTORNEY. The bill specifies situations where refusals of a
11 power of attorney are acceptable and unacceptable. A person
12 that refuses to accept an acknowledged power of attorney in
13 violation of the bill is subject to a court order mandating
14 acceptance of the power of attorney and is liable for damages
15 sustained by the principal and reasonable attorney fees and
16 costs. Such an action must be brought within one year of the
17 initial request for acceptance of the power of attorney.

18 OTHER PROVISIONS. The bill includes provisions relating to
19 the application of principles of law and equity and the laws of
20 financial institutions, and remedies under other law.

21 AUTHORITY PROVISIONS. The bill distinguishes between grants
22 of specific authority requiring express language in a power of
23 attorney and grants of general authority.

24 SPECIFIC GRANT OF AUTHORITY. Specific grants of authority
25 require specific language granting certain powers to the agent
26 including powers to create, amend, revoke, or terminate an
27 inter vivos trust; make a gift; create or change rights of
28 survivorship; create or change a beneficiary designation;
29 delegate authority granted under the power of attorney;
30 waive the principal's right to be a beneficiary of a joint
31 and survivor annuity, including a survivor benefit under a
32 retirement plan; exercise fiduciary powers that the principal
33 has the authority to delegate; and disclaim property, including
34 a power of appointment.

35 GENERAL GRANT OF AUTHORITY. If a power of attorney grants an

1 agent authority to do all acts that a principal could do, the
2 agent has general authority to act on behalf of the principal
3 with respect to the following subject areas: real property;
4 tangible personal property; stocks and bonds; commodities and
5 options; banks and other financial institutions; the operation
6 of an entity or business; insurance and annuities; estates,
7 trusts, and other beneficial interests; claims and litigation;
8 personal and family maintenance; benefits from governmental
9 programs or civil or military service; retirement plans; taxes;
10 and gifts. The bill contains specific provisions relating to
11 the authority granted to an agent in each of the abovementioned
12 subject areas.

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

31 STATUTORY FORMS. The bill includes suggested statutory
32 forms for the creation of a power of attorney and for agent
33 certification of facts relating to a power of attorney
34 consistent with the provisions of the Code chapter.

35 MISCELLANEOUS PROVISIONS. The bill provides provisions

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1 relating to uniform application and construction, the
2 applicability of the federal Electronic Signatures in Global
3 and National Commerce Act, and the effect of the bill on
4 existing powers of attorney.

5 REPEAL. The bill repeals current Code chapter 633B and makes
6 conforming Code changes.