

1 SB53
2 125907-4
3 By Senators Orr and Irons
4 RFD: Judiciary
5 First Read: 01-MAR-11
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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To add a new Chapter 1A of Title 26 of the Code of
12 Alabama 1975; to provide for the Alabama Uniform Power of
13 Attorney Act; to generally provide for definitions and
14 applicability; to provide for when a power of attorney is
15 durable; to provide for the execution, validity, meaning,
16 effect, and termination of a power of attorney; to provide for
17 the nomination of a conservator or guardian; to provide for an
18 agent, co-agents, and successor agents and duties of the
19 agent; to provide for the authority of a power of attorney; to
20 provide for an agent's liability to the principal; to provide
21 a power of attorney form and a form of an agent's
22 certification; to provide for the effect on existing powers of
23 attorney; to provide for health care powers of attorney
24 executed after the effective date of this act; and to amend
25 Section 26-1-2 of the Code of Alabama 1975, relating to a
26 durable power of attorney.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The following new Chapter 1A is added to
2 Title 26 of the Code of Alabama 1975, to read as follows:

3 CHAPTER 1A. ALABAMA UNIFORM POWER OF ATTORNEY ACT

4 ARTICLE 1. GENERAL PROVISIONS

5 SECTION 26-1A-101. SHORT TITLE. This chapter may be
6 cited as the Alabama Uniform Power of Attorney Act.

7 SECTION 26-1A-102. DEFINITIONS. In this chapter:

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

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

15 (3) "Electronic" means relating to technology having
16 electrical, digital, magnetic, wireless, optical,
17 electromagnetic, or similar capabilities.

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

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

21 (A) has an impairment in the ability to receive and
22 evaluate information or make or communicate decisions even
23 with the use of technological assistance; or

24 (B) is:

25 (i) missing;

26 (ii) detained, including incarcerated in a penal
27 system; or

1 (iii) outside the United States and unable to
2 return.

3 (6) "Person" means an individual, corporation,
4 business trust, estate, trust, partnership, limited liability
5 company, association, joint venture, public corporation,
6 government or governmental subdivision, agency, or
7 instrumentality, or any other legal or commercial entity.

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

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

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

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

4 (11) "Record" means information that is inscribed on
5 a tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form.

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

9 (A) to execute or adopt a tangible symbol; or

10 (B) to attach to or logically associate with the
11 record an electronic sound, symbol, or process.

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

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

21 SECTION 26-1A-103. APPLICABILITY. (a) This chapter
22 applies to all powers of attorney, executed on or after
23 January 1, 2012, except:

24 (1) a power to the extent it is coupled with an
25 interest in the subject of the power, including a power given
26 to or for the benefit of a creditor in connection with a
27 credit transaction;

1 (2) a proxy or other delegation to exercise voting
2 rights or management rights with respect to an entity; and

3 (3) a power created on a form prescribed by a
4 government or governmental subdivision, agency, or
5 instrumentality for a governmental purpose.

6 (b) A power to make health care decisions executed
7 on or after January 1, 2012, is governed by Section 26-1A-404.
8 Nothing in this chapter shall affect any action taken under
9 the Natural Death Act, Chapter 8A of Title 22.

10 SECTION 26-1A-104. POWER OF ATTORNEY IS DURABLE. A
11 power of attorney to which this chapter applies is durable,
12 unless it expressly provides that it is terminated by the
13 incapacity of the principal.

14 SECTION 26-1A-105. EXECUTION OF POWER OF ATTORNEY. A
15 power of attorney must be signed by the principal or in the
16 principal's conscious presence by another individual directed
17 by the principal to sign the principal's name on the power of
18 attorney. A signature on a power of attorney is presumed to be
19 genuine if the principal acknowledges the signature before a
20 notary public or other individual authorized by law to take
21 acknowledgments.

22 SECTION 26-1A-106. VALIDITY OF POWER OF ATTORNEY.

23 (a) A power of attorney executed in this state on or
24 after January 1, 2012, is valid if its execution complies with
25 Section 26-1A-105.

26 (b) A power of attorney executed in this state
27 before January 1, 2012, is valid if its execution complied

1 with the law of this state as it existed at the time of
2 execution.

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

6 (1) the law of the jurisdiction that determines the
7 meaning and effect of the power of attorney pursuant to
8 Section 26-1A-107;

9 (2) the requirements for a military power of
10 attorney pursuant to 10 U.S.C. Section 1044b, as amended; or

11 (3) Alabama law.

12 (d) Except as otherwise provided by statute other
13 than this chapter, a photocopy or electronically transmitted
14 copy of an original power of attorney has the same effect as
15 the original.

16 SECTION 26-1A-107. MEANING AND EFFECT OF POWER OF
17 ATTORNEY. The meaning and effect of a power of attorney is
18 determined by the law of the jurisdiction indicated in the
19 power of attorney and, in the absence of an indication of
20 jurisdiction, by the law of the jurisdiction in which the
21 power of attorney was executed.

22 SECTION 26-1A-108. NOMINATION OF CONSERVATOR OR
23 GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.

24 (a) In a power of attorney, a principal may nominate
25 a conservator of the principal's estate or guardian of the
26 principal's person for consideration by the court, if
27 protective proceedings for the principal's estate or person

1 are begun after the principal executes the power of attorney.
2 Except for good cause shown or disqualification, the court
3 shall make its appointment in accordance with the principal's
4 most recent nomination.

5 (b) If, after a principal executes a power of
6 attorney, a court appoints a conservator of the principal's
7 estate or other fiduciary charged with the management of all
8 the property of the principal or all of his or her property
9 except specified exclusions, the agent is accountable to the
10 fiduciary as well as to the principal. In such event, the
11 fiduciary has the same power to revoke or amend the power of
12 attorney that the principal would have had if he or she was
13 not disabled, incompetent, or incapacitated.

14 SECTION 26-1A-109. WHEN POWER OF ATTORNEY EFFECTIVE.

15 (a) A power of attorney is effective when executed
16 unless the principal provides in the power of attorney that it
17 becomes effective at a future date or upon the occurrence of a
18 future event or contingency.

19 (b) If a power of attorney becomes effective upon
20 the occurrence of a future event or contingency, the
21 principal, in the power of attorney, may authorize one or more
22 persons to determine in a writing or other record that the
23 event or contingency has occurred.

24 (c) If a power of attorney becomes effective upon
25 the principal's incapacity and the principal has not
26 authorized a person to determine whether the principal is
27 incapacitated, or the person authorized is unable or unwilling

1 to make the determination, the power of attorney becomes
2 effective upon a determination in a writing or other record
3 by:

4 (1) a physician or licensed psychologist that the
5 principal is incapacitated within the meaning of Section
6 26-1A-102(5) (A); or

7 (2) an attorney-at-law, a judge, or an appropriate
8 governmental official that the principal is incapacitated
9 within the meaning of Section 26-1A-102(5) (B).

10 (d) A person authorized by the principal in the
11 power of attorney to determine that the principal is
12 incapacitated may act as the principal's personal
13 representative pursuant to the Health Insurance Portability
14 and Accountability Act, Sections 1171 through 1179 of the
15 Social Security Act, 42 U.S.C. Section 1320d, as amended, and
16 applicable regulations, to obtain access to the principal's
17 health care information and communicate with the principal's
18 health care provider.

19 SECTION 26-1A-110. TERMINATION OF POWER OF ATTORNEY
20 OR AGENT'S AUTHORITY.

21 (a) A power of attorney terminates when:

22 (1) the principal dies;

23 (2) the principal becomes incapacitated, if the
24 power of attorney is not durable;

25 (3) the principal revokes the power of attorney;

26 (4) the power of attorney provides that it
27 terminates;

1 (5) the purpose of the power of attorney is
2 accomplished;

3 (6) the principal revokes the agent's authority or
4 the agent dies, becomes incapacitated, or resigns, and the
5 power of attorney does not provide for another agent to act
6 under the power of attorney; or

7 (7) revoked by a fiduciary appointed by a court.

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

9 (1) the principal revokes the authority;

10 (2) the agent dies, becomes incapacitated, or
11 resigns;

12 (3) an action is filed for the divorce or annulment
13 of the agent's marriage to the principal or their legal
14 separation, unless the power of attorney otherwise provides;
15 or

16 (4) the power of attorney terminates.

17 (c) Unless the power of attorney otherwise provides,
18 an agent's authority is exercisable until the authority
19 terminates under subsection (b), notwithstanding a lapse of
20 time since the execution of the power of attorney.

21 (d) Termination of an agent's authority or of a
22 power of attorney is not effective as to the agent that,
23 without actual knowledge of the termination, acts in good
24 faith under the power of attorney. An act so performed, unless
25 otherwise invalid or unenforceable, binds the principal and
26 the principal's successors in interest.

1 (e) Incapacity of the principal of a power of
2 attorney that is not durable does not revoke or terminate the
3 power of attorney as to an agent that, without actual
4 knowledge of the incapacity, acts in good faith under the
5 power of attorney. An act so performed, unless otherwise
6 invalid or unenforceable, binds the principal and the
7 principal's successors in interest.

8 (f) The execution of a power of attorney does not
9 revoke a power of attorney previously executed by the
10 principal unless the subsequent power of attorney provides
11 that the previous power of attorney is revoked or that all
12 other powers of attorney are revoked.

13 SECTION 26-1A-111. CO-AGENTS AND SUCCESSOR AGENTS.

14 (a) A principal may designate two or more persons to
15 act as co-agents. Unless the power of attorney otherwise
16 provides, each co-agent may exercise its authority
17 independently.

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

25 (1) has the same authority as that granted to the
26 original agent; and

1 (2) may not act until all predecessor agents have
2 resigned, died, become incapacitated, are no longer qualified
3 to serve, or have declined to serve.

4 (c) Except as otherwise provided in the power of
5 attorney and subsection (d), an agent that does not
6 participate in or conceal a breach of fiduciary duty committed
7 by another agent, including a predecessor agent, is not liable
8 for the actions of the other agent.

9 (d) An agent that has accepted appointment and has
10 actual knowledge of a breach or imminent breach of fiduciary
11 duty by another agent shall notify the principal and, if the
12 principal is incapacitated, take any action reasonably
13 appropriate in the circumstances to safeguard the principal's
14 best interest. An agent that fails to notify the principal or
15 take action as required by this subsection is liable for the
16 reasonably foreseeable damages that could have been avoided if
17 the agent had notified the principal or taken such action.

18 SECTION 26-1A-112. REIMBURSEMENT AND COMPENSATION OF
19 AGENT. Unless the power of attorney otherwise provides, an
20 agent is entitled to reimbursement of expenses reasonably
21 incurred on behalf of the principal and to compensation that
22 is reasonable under the circumstances.

23 SECTION 26-1A-113. AGENT'S ACCEPTANCE. Except as
24 otherwise provided in the power of attorney, a person accepts
25 appointment as an agent under a power of attorney by
26 exercising authority or performing duties as an agent or by
27 any other assertion or conduct indicating acceptance.

1 SECTION 26-1A-114. AGENT'S DUTIES.

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

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

7 (2) act in good faith; and

8 (3) act only within the scope of authority granted
9 in the power of attorney.

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

12 (1) act loyally for the principal's benefit;

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

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

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

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

25 (6) attempt to preserve the principal's estate plan,
26 to the extent actually known by the agent, if preserving the

1 plan is consistent with the principal's best interest based on
2 all relevant factors, including:

3 (A) the value and nature of the principal's
4 property;

5 (B) the principal's foreseeable obligations and need
6 for maintenance;

7 (C) minimization of taxes, including income, estate,
8 inheritance, generation-skipping transfer, and gift taxes; and

9 (D) eligibility for a benefit, a program, or
10 assistance under a statute or regulation.

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

14 (d) An agent that acts with care, competence, and
15 diligence for the best interest of the principal is not liable
16 solely because the agent also benefits from the act or has an
17 individual or conflicting interest in relation to the property
18 or affairs of the principal.

19 (e) If an agent is selected by the principal because
20 of special skills or expertise possessed by the agent or in
21 reliance on the agent's representation that the agent has
22 special skills or expertise, the special skills or expertise
23 must be considered in determining whether the agent has acted
24 with care, competence, and diligence under the circumstances.

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

1 (g) An agent that exercises authority to delegate to
2 another person the authority granted by the principal or that
3 engages another person on behalf of the principal is not
4 liable for an act, error of judgment, or default of that
5 person if the agent exercises care, competence, and diligence
6 in selecting and monitoring the person.

7 (h) Except as otherwise provided in the power of
8 attorney, an agent is not required to disclose receipts,
9 disbursements, or transactions conducted on behalf of the
10 principal unless ordered by a court or requested by the
11 principal, a guardian, a conservator, another fiduciary acting
12 for the principal, a governmental agency having authority to
13 protect the welfare of the principal, or, upon the death of
14 the principal, by the personal representative or successor in
15 interest of the principal's estate. If so requested, within 30
16 days the agent shall comply with the request or provide a
17 writing or other record substantiating why additional time is
18 needed and shall comply with the request within an additional
19 30 days.

20 SECTION 26-1A-115. EXONERATION OF AGENT. A provision
21 in a power of attorney relieving an agent of liability for
22 breach of duty is binding on the principal and the principal's
23 successors in interest except to the extent the provision:

24 (1) relieves the agent of liability for breach of
25 duty committed dishonestly, with an improper motive, or with
26 reckless indifference to the purposes of the power of attorney
27 or the best interest of the principal; or

1 (2) was inserted as a result of an abuse of a
2 confidential or fiduciary relationship with the principal.

3 SECTION 26-1A-116. JUDICIAL RELIEF.

4 (a) The following persons may petition a court to
5 construe a power of attorney, determine the validity of a
6 power of attorney, or review the agent's conduct, and grant
7 appropriate relief:

8 (1) the principal or the agent;

9 (2) a guardian, conservator, or other fiduciary
10 acting for the principal;

11 (3) a person authorized to make health care
12 decisions for the principal;

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

14 (5) an individual who would qualify as a presumptive
15 heir of the principal;

16 (6) a person named as a beneficiary to receive any
17 property, benefit, or contractual right on the principal's
18 death or as a beneficiary of a trust created by or for the
19 principal that has a financial interest in the principal's
20 estate;

21 (7) a governmental agency having regulatory
22 authority to protect the welfare of the principal;

23 (8) the principal's caregiver or another person that
24 demonstrates sufficient interest in the principal's welfare;

25 (9) a person asked to accept the power of attorney;

26 and

1 (10) any other person who demonstrates a sufficient
2 legal interest in the construction or validity of the power of
3 attorney or the agent's conduct in connection with the power
4 of attorney, such as to give that person standing.

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

9 SECTION 26-1A-117. AGENT'S LIABILITY TO THE
10 PRINCIPAL. An agent that violates this chapter is liable to
11 the principal or the principal's successors in interest for
12 the amount required to:

13 (1) restore the value of the principal's property to
14 what it would have been had the violation not occurred; and

15 (2) reimburse the principal or the principal's
16 successors in interest for the attorney's fees and costs paid
17 on the agent's behalf.

18 SECTION 26-1A-118. AGENT'S RESIGNATION; NOTICE.
19 Unless the power of attorney provides a different method for
20 an agent's resignation, an agent may resign by giving notice
21 to the principal and, if the principal is incapacitated:

22 (1) to the conservator, or guardian if there is no
23 conservator, if either has been appointed for the principal
24 and a co-agent or successor agent; or

25 (2) if there is no person described in paragraph
26 (1):

27 (A) the principal's caregiver;

1 (B) another person reasonably believed by the agent
2 to have sufficient interest in the principal's welfare; or

3 (C) a governmental agency having authority to
4 protect the welfare of the principal.

5 SECTION 26-1A-119. ACCEPTANCE OF AND RELIANCE UPON
6 ACKNOWLEDGED POWER OF ATTORNEY.

7 (a) For purposes of this section and Section
8 26-1A-120, "acknowledged" means purportedly verified before a
9 notary public or other individual authorized to take
10 acknowledgments and "reasonable time" shall not be deemed to
11 be less than seven business days.

12 (b) A person that effects a transaction in reliance
13 upon an acknowledged power of attorney without actual
14 knowledge that the signature is not genuine may rely upon the
15 presumption under Section 26-1A-105 that the signature is
16 genuine.

17 (c) A person that effects a transaction in reliance
18 upon an acknowledged power of attorney without actual
19 knowledge that the power of attorney is void, invalid, or
20 terminated, that the purported agent's authority is void,
21 invalid, or terminated, or that the agent is exceeding or
22 improperly exercising the agent's authority is fully
23 exonerated from any liability for effecting the transaction in
24 reliance upon the power of attorney as if the power of
25 attorney were genuine, valid, and still in effect, the agent's
26 authority were genuine, valid, and still in effect, and the

1 agent had not exceeded and had properly exercised the
2 authority.

3 (d) A person that is asked to effect a transaction
4 in reliance upon an acknowledged power of attorney may, but is
5 not required to, request, and rely upon, without further
6 investigation:

7 (1) an agent's certification under penalty of
8 perjury of any factual matter concerning the principal, agent,
9 or power of attorney;

10 (2) an acknowledged or properly authenticated
11 English translation of the power of attorney if the power of
12 attorney contains, in whole or in part, language other than
13 English; and

14 (3) an opinion of counsel as to any matter of law
15 concerning the power of attorney if the person making the
16 request provides in a writing or other record the reason for
17 the request.

18 (e) An English translation or an opinion of counsel
19 requested under this section must be provided at the
20 principal's expense if the request is made within a reasonable
21 time after a person is requested to effect a transaction in
22 reliance upon the power of attorney.

23 (f) For purposes of this section and Section
24 26-1A-120, a person that conducts activities through employees
25 is without actual knowledge of a fact relating to a power of
26 attorney, a principal, or an agent if the employee effecting

1 the transaction in reliance upon the power of attorney is
2 without actual knowledge of the fact.

3 SECTION 26-1A-120. LIABILITY FOR REFUSAL TO ACCEPT
4 ACKNOWLEDGED POWER OF ATTORNEY.

5 (a) Except as otherwise provided in subsection (b):

6 (1) a person shall either effect a requested
7 transaction in reliance upon an acknowledged power of attorney
8 or request a certification, a translation, or an opinion of
9 counsel under Section 26-1A-119(d) within a reasonable time
10 after presentation of the power of attorney and a request to
11 effect the transaction;

12 (2) if a person requests a certification, a
13 translation, or an opinion of counsel under Section
14 26-1A-119(d), the person shall effect the transaction in
15 reliance upon the power of attorney within a reasonable time
16 after receipt of the certification, translation, or opinion of
17 counsel; and

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

21 (b) A person is not required to effect a transaction
22 in reliance upon an acknowledged power of attorney:

23 (1) if the person would not be required to engage in
24 the transaction with the principal if the principal was
25 competent and acting on his or her own behalf;

26 (2) if the person in good faith believes engaging in
27 the transaction with the agent or the principal in the same

1 circumstances would be inconsistent with law or any rule or
2 regulation of any government or any governmental agency or
3 instrumentality;

4 (3) if the person has actual knowledge of the fact
5 that the power of attorney is void, invalid, or terminated,
6 that the agent's authority is void, invalid, or terminated, or
7 that the agent is exceeding or improperly exercising the
8 agent's authority;

9 (4) until after a certification, a translation, or
10 an opinion of counsel requested under Section 26-1A-119(d) is
11 provided to such person;

12 (5) if the person in good faith believes that the
13 power of attorney is void, invalid, or terminated, that the
14 agent's authority is void, invalid, or terminated, or that the
15 agent is exceeding or improperly exercising the agent's
16 authority, whether or not a certification, a translation, or
17 an opinion of counsel under Section 26-1A-119(d) has been
18 requested or provided; or

19 (6) if the person makes, or has actual knowledge
20 that another person has made, a report to the Department of
21 Human Resources stating a belief that the principal may be
22 subject to physical or financial abuse, neglect, exploitation,
23 or abandonment by the agent or a person acting for or with the
24 agent.

25 (c) A person that refuses in violation of this
26 section to effect a transaction in reliance upon an
27 acknowledged power of attorney is subject to, as its sole

1 liability with respect to such a refusal notwithstanding
2 Section 26-1A-123:

3 (1) a court order mandating that the person effect
4 such transaction in reliance upon the power of attorney; and

5 (2) liability for reasonable attorney's fees and
6 costs incurred in any action or proceeding that confirms the
7 validity of the power of attorney or mandates that the person
8 effect such transaction in reliance upon the power of
9 attorney.

10 SECTION 26-1A-121. PRINCIPLES OF LAW AND EQUITY.

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

13 SECTION 26-1A-122. LAWS APPLICABLE TO FINANCIAL
14 INSTITUTIONS AND ENTITIES. This chapter does not supersede any
15 other law applicable to financial institutions or other
16 entities, and the other law controls if inconsistent with this
17 chapter.

18 SECTION 26-1A-123. REMEDIES UNDER OTHER LAW. The
19 remedies under this chapter are not exclusive and do not
20 abrogate any right or remedy under the law of this state other
21 than this chapter.

22 ARTICLE 2. AUTHORITY

23 SECTION 26-1A-201. AUTHORITY THAT REQUIRES SPECIFIC
24 GRANT; GRANT OF GENERAL AUTHORITY.

25 (a) An agent under a power of attorney may do the
26 following on behalf of the principal or with the principal's
27 property only if the power of attorney expressly grants the

1 agent the authority and exercise of the authority is not
2 otherwise prohibited by another agreement or instrument to
3 which the authority or property is subject:

4 (1) create, amend, revoke, or terminate an inter
5 vivos trust;

6 (2) [reserved];

7 (3) create or change rights of survivorship;

8 (4) create or change a beneficiary designation;

9 (5) delegate authority granted under the power of
10 attorney;

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

14 (7) exercise fiduciary powers that the principal has
15 authority to delegate.

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

25 (c) Subject to subsections (a), (b), (d), and (e),
26 if a power of attorney grants to an agent authority to do all
27 acts that a principal could do, the agent has the general

1 authority described in Sections 26-1A-204 through 26-1A-217,
2 irrespective of whether the power of attorney references any
3 of the transactions described in those sections.

4 (d) Unless the power of attorney otherwise expressly
5 provides, a grant of authority to make a gift is subject to
6 Section 26-1A-217.

7 (e) Subject to subsections (a), (b), and (d), if the
8 subjects over which authority is granted in a power of
9 attorney are similar or overlap, the broadest authority
10 controls.

11 (f) Authority granted in a power of attorney is
12 exercisable with respect to property that the principal has
13 when the power of attorney is executed or acquires later,
14 whether or not the property is located in this state and
15 whether or not the authority is exercised or the power of
16 attorney is executed in this state.

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

21 SECTION 26-1A-202. INCORPORATION OF AUTHORITY.

22 (a) An agent has authority described in this article
23 if the power of attorney refers to general authority with
24 respect to the descriptive term for the subjects stated in
25 Sections 26-1A-204 through 26-1A-217 or cites the section in
26 which the authority is described.

1 (b) A reference in a power of attorney to general
2 authority with respect to the descriptive term for a subject
3 in Sections 26-1A-204 through 26-1A-217 or a citation to a
4 section of Sections 26-1A-204 through 26-1A-217 incorporates
5 the entire section as if it were set out in full in the power
6 of attorney.

7 (c) A principal may modify authority incorporated by
8 reference.

9 SECTION 26-1A-203. CONSTRUCTION OF AUTHORITY
10 GENERALLY. Except as otherwise provided in the power of
11 attorney, by executing a power of attorney that incorporates
12 by reference a subject described in Sections 26-1A-204 through
13 26-1A-217 or that grants to an agent authority to do all acts
14 that a principal could do pursuant to Section 26-1A-201(c), a
15 principal authorizes the agent, with respect to that subject,
16 to:

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

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

1 (3) execute, acknowledge, seal, deliver, file, or
2 record any instrument or communication the agent considers
3 desirable to accomplish a purpose of a transaction, including
4 creating at any time a schedule listing some or all of the
5 principal's property and attaching it to the power of
6 attorney;

7 (4) initiate, participate in, submit to alternative
8 dispute resolution, settle, oppose, or propose or accept a
9 compromise with respect to a claim existing in favor of or
10 against the principal or intervene in litigation relating to
11 the claim;

12 (5) seek on the principal's behalf the assistance of
13 a court or other governmental agency to carry out an act
14 authorized in the power of attorney;

15 (6) engage, compensate, and discharge an attorney,
16 accountant, discretionary investment manager, expert witness,
17 or other advisor;

18 (7) prepare, execute, and file a record, report, or
19 other document to safeguard or promote the principal's
20 interest under a statute or regulation;

21 (8) communicate with any representative or employee
22 of a government or governmental subdivision, agency, or
23 instrumentality, on behalf of the principal;

24 (9) access communications intended for, and
25 communicate on behalf of the principal, whether by mail,
26 electronic transmission, telephone, or other means; and

1 (10) do any lawful act with respect to the subject
2 and all property related to the subject.

3 SECTION 26-1A-204. REAL PROPERTY. Unless the power
4 of attorney otherwise provides, language in a power of
5 attorney granting general authority with respect to real
6 property authorizes the agent to:

7 (1) demand, buy, lease, receive, accept as a gift or
8 as security for an extension of credit, or otherwise acquire
9 or reject an interest in real property or a right incident to
10 real property;

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

21 (3) pledge or mortgage an interest in real property
22 or right incident to real property as security to borrow money
23 or pay, renew, or extend the time of payment of a debt of the
24 principal or a debt guaranteed by the principal;

25 (4) release, assign, satisfy, or enforce by
26 litigation or otherwise a mortgage, deed of trust, conditional

1 sale contract, encumbrance, lien, or other claim to real
2 property which exists or is asserted;

3 (5) manage or conserve an interest in real property
4 or a right incident to real property owned or claimed to be
5 owned by the principal, including:

6 (A) insuring against liability or casualty or other
7 loss;

8 (B) obtaining or regaining possession of or
9 protecting the interest or right by litigation or otherwise;

10 (C) paying, assessing, compromising, or contesting
11 taxes or assessments or applying for and receiving refunds in
12 connection with them; and

13 (D) purchasing supplies, hiring assistance or labor,
14 and making repairs or alterations to the real property;

15 (6) use, develop, alter, replace, remove, erect, or
16 install structures or other improvements upon real property in
17 or incident to which the principal has, or claims to have, an
18 interest or right;

19 (7) participate in a reorganization with respect to
20 real property or an entity that owns an interest in or right
21 incident to real property and receive, and hold, and act with
22 respect to stocks and bonds or other property received in a
23 plan of reorganization, including:

24 (A) selling or otherwise disposing of them;

25 (B) exercising or selling an option, right of
26 conversion, or similar right with respect to them; and

1 (C) exercising any voting rights in person or by
2 proxy;

3 (8) change the form of title of an interest in or
4 right incident to real property; and

5 (9) dedicate to public use, with or without
6 consideration, easements or other real property in which the
7 principal has, or claims to have, an interest.

8 SECTION 26-1A-205. TANGIBLE PERSONAL PROPERTY.

9 Unless the power of attorney otherwise provides, language in a
10 power of attorney granting general authority with respect to
11 tangible personal property authorizes the agent to:

12 (1) demand, buy, receive, accept as a gift or as
13 security for an extension of credit, or otherwise acquire or
14 reject ownership or possession of tangible personal property
15 or an interest in tangible personal property;

16 (2) sell; exchange; convey with or without
17 covenants, representations, or warranties; quitclaim; release;
18 surrender; create a security interest in; grant options
19 concerning; lease; sublease; or, otherwise dispose of tangible
20 personal property or an interest in tangible personal
21 property;

22 (3) grant a security interest in tangible personal
23 property or an interest in tangible personal property as
24 security to borrow money or pay, renew, or extend the time of
25 payment of a debt of the principal or a debt guaranteed by the
26 principal;

1 (4) release, assign, satisfy, or enforce by
2 litigation or otherwise, a security interest, lien, or other
3 claim on behalf of the principal, with respect to tangible
4 personal property or an interest in tangible personal
5 property;

6 (5) manage or conserve tangible personal property or
7 an interest in tangible personal property on behalf of the
8 principal, including:

9 (A) insuring against liability or casualty or other
10 loss;

11 (B) obtaining or regaining possession of or
12 protecting the property or interest, by litigation or
13 otherwise;

14 (C) paying, assessing, compromising, or contesting
15 taxes or assessments or applying for and receiving refunds in
16 connection with taxes or assessments;

17 (D) moving the property from place to place;

18 (E) storing the property for hire or on a gratuitous
19 bailment; and

20 (F) using and making repairs, alterations, or
21 improvements to the property; and

22 (6) change the form of title of an interest in
23 tangible personal property.

24 SECTION 26-1A-206. STOCKS AND BONDS. Unless the
25 power of attorney otherwise provides, language in a power of
26 attorney granting general authority with respect to stocks and
27 bonds authorizes the agent to:

- 1 (1) buy, sell, and exchange stocks and bonds;
- 2 (2) establish, continue, modify, or terminate an
- 3 account with respect to stocks and bonds;
- 4 (3) pledge stocks and bonds as security to borrow,
- 5 pay, renew, or extend the time of payment of a debt of the
- 6 principal;
- 7 (4) receive certificates and other evidences of
- 8 ownership with respect to stocks and bonds; and
- 9 (5) exercise voting rights with respect to stocks
- 10 and bonds in person or by proxy, enter into voting trusts, and
- 11 consent to limitations on the right to vote.

12 SECTION 26-1A-207. COMMODITIES AND OPTIONS. Unless
13 the power of attorney otherwise provides, language in a power
14 of attorney granting general authority with respect to
15 commodities and options authorizes the agent to:

- 16 (1) buy, sell, exchange, assign, settle, and
- 17 exercise commodity futures contracts and call or put options
- 18 on stocks or stock indexes traded on a regulated option
- 19 exchange; and
- 20 (2) establish, continue, modify, and terminate
- 21 option accounts.

22 SECTION 26-1A-208. BANKS AND OTHER FINANCIAL
23 INSTITUTIONS. Unless the power of attorney otherwise provides,
24 language in a power of attorney granting general authority
25 with respect to banks and other financial institutions
26 authorizes the agent to:

1 (1) continue, modify, and terminate an account or
2 other banking arrangement made by or on behalf of the
3 principal;

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

8 (3) contract for services available from a financial
9 institution, including renting a safe deposit box or space in
10 a vault;

11 (4) withdraw, by check, order, electronic funds
12 transfer, or otherwise, money or property of the principal
13 deposited with or left in the custody of a financial
14 institution;

15 (5) receive statements of account, vouchers,
16 notices, and similar documents from a financial institution
17 and act with respect to them;

18 (6) enter a safe deposit box or vault and withdraw
19 or add to the contents;

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

24 (8) make, assign, draw, endorse, discount,
25 guarantee, and negotiate promissory notes, checks, drafts, and
26 other negotiable or nonnegotiable paper of the principal or
27 payable to the principal or the principal's order, transfer

1 money, receive the cash or other proceeds of those
2 transactions, and accept a draft drawn by a person upon the
3 principal and pay it when due;

4 (9) receive for the principal and act upon a sight
5 draft, warehouse receipt, or other document of title whether
6 tangible or electronic, or other negotiable or nonnegotiable
7 instrument;

8 (10) apply for, receive, and use letters of credit,
9 credit and debit cards, electronic transaction authorizations,
10 and traveler's checks from a financial institution and give an
11 indemnity or other agreement in connection with letters of
12 credit; and

13 (11) consent to an extension of the time of payment
14 with respect to commercial paper or a financial transaction
15 with a financial institution.

16 SECTION 26-1A-209. OPERATION OF ENTITY OR BUSINESS.

17 Subject to the terms of a document or an agreement governing
18 an entity or an entity ownership interest, and unless the
19 power of attorney otherwise provides, language in a power of
20 attorney granting general authority with respect to operation
21 of an entity or business authorizes the agent to:

22 (1) operate, buy, sell, enlarge, reduce, or
23 terminate an ownership interest;

24 (2) perform a duty or discharge a liability and
25 exercise in person or by proxy a right, power, privilege, or
26 option that the principal has, may have, or claims to have;

27 (3) enforce the terms of an ownership agreement;

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

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

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

13 (7) with respect to an entity or business owned
14 solely by the principal:

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

19 (B) determine:

20 (i) the location of its operation;

21 (ii) the nature and extent of its business;

22 (iii) the methods of manufacturing, selling,
23 merchandising, financing, accounting, and advertising employed
24 in its operation;

25 (iv) the amount and types of insurance carried; and

1 (v) the mode of engaging, compensating, and dealing
2 with its employees and accountants, attorneys, or other
3 advisors;

4 (C) change the name or form of organization under
5 which the entity or business is operated and enter into an
6 ownership agreement with other persons to take over all or
7 part of the operation of the entity or business; and

8 (D) demand and receive money due or claimed by the
9 principal or on the principal's behalf in the operation of the
10 entity or business and control and disburse the money in the
11 operation of the entity or business;

12 (8) put additional capital into an entity or
13 business in which the principal has an interest;

14 (9) join in a plan of reorganization, consolidation,
15 conversion, domestication, or merger of the entity or
16 business;

17 (10) sell or liquidate all or part of an entity or
18 business;

19 (11) establish the value of an entity or business
20 under a buy-out agreement to which the principal is a party;

21 (12) prepare, sign, file, and deliver reports,
22 compilations of information, returns, or other papers with
23 respect to an entity or business and make related payments;
24 and

25 (13) pay, compromise, or contest taxes, assessments,
26 fines, or penalties and perform any other act to protect the
27 principal from illegal or unnecessary taxation, assessments,

1 fines, or penalties, with respect to an entity or business,
2 including attempts to recover, in any manner permitted by law,
3 money paid before or after the execution of the power of
4 attorney.

5 SECTION 26-1A-210. INSURANCE AND ANNUITIES. Unless
6 the power of attorney otherwise provides, language in a power
7 of attorney granting general authority with respect to
8 insurance and annuities authorizes the agent to:

9 (1) continue, pay the premium or make a contribution
10 on, modify, exchange, rescind, release, or terminate a
11 contract procured by or on behalf of the principal which
12 insures or provides an annuity to either the principal or
13 another person, whether or not the principal is a beneficiary
14 under the contract;

15 (2) procure new, different, and additional contracts
16 of insurance and annuities for the principal and the
17 principal's spouse, children, and other dependents, and select
18 the amount, type of insurance or annuity, and mode of payment;

19 (3) pay the premium or make a contribution on,
20 modify, exchange, rescind, release, or terminate a contract of
21 insurance or annuity procured by the agent;

22 (4) apply for and receive a loan secured by a
23 contract of insurance or annuity;

24 (5) surrender and receive the cash surrender value
25 on a contract of insurance or annuity;

26 (6) exercise an election;

1 (7) exercise investment powers available under a
2 contract of insurance or annuity;

3 (8) change the manner of paying premiums on a
4 contract of insurance or annuity;

5 (9) change or convert the type of insurance or
6 annuity with respect to which the principal has or claims to
7 have authority described in this section;

8 (10) apply for and procure a benefit or assistance
9 under a statute or regulation to guarantee or pay premiums of
10 a contract of insurance on the life of the principal;

11 (11) collect, sell, assign, hypothecate, borrow
12 against, or pledge the interest of the principal in a contract
13 of insurance or annuity;

14 (12) select the form and timing of the payment of
15 proceeds from a contract of insurance or annuity; and

16 (13) pay, from proceeds or otherwise, compromise or
17 contest, and apply for refunds in connection with, a tax or
18 assessment levied by a taxing authority with respect to a
19 contract of insurance or annuity or its proceeds or liability
20 accruing by reason of the tax or assessment.

21 SECTION 26-1A-211. ESTATES, TRUSTS, AND OTHER
22 BENEFICIAL INTERESTS.

23 (a) In this section, "estates, trusts, and other
24 beneficial interests" means a trust, probate estate,
25 guardianship, conservatorship, escrow, or custodianship or a
26 fund from which the principal is, may become, or claims to be,
27 entitled to a share or payment.

1 (b) Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority
3 with respect to estates, trusts, and other beneficial
4 interests authorizes the agent to:

5 (1) accept, receive, receipt for, sell, assign,
6 pledge, or exchange a share in or payment from the fund;

7 (2) demand or obtain money or another thing of value
8 to which the principal is, may become, or claims to be,
9 entitled by reason of the fund, by litigation or otherwise;

10 (3) exercise for the benefit of the principal a
11 presently exercisable general power of appointment held by the
12 principal;

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

19 (5) initiate, participate in, submit to alternative
20 dispute resolution, settle, oppose, or propose or accept a
21 compromise with respect to litigation to remove, substitute,
22 or surcharge a fiduciary;

23 (6) conserve, invest, disburse, or use anything
24 received for an authorized purpose;

25 (7) transfer an interest of the principal in real
26 property, stocks and bonds, accounts with financial
27 institutions or securities intermediaries, insurance,

1 annuities, and other property to the trustee of a revocable
2 trust created by the principal as settlor; and

3 (8) reject, renounce, disclaim, release, or consent
4 to a reduction in or modification of a share in or payment
5 from the fund.

6 SECTION 26-1A-212. CLAIMS AND LITIGATION. Unless the
7 power of attorney otherwise provides, language in a power of
8 attorney granting general authority with respect to claims and
9 litigation authorizes the agent to:

10 (1) assert and maintain before a court or
11 administrative agency a claim, claim for relief, cause of
12 action, counterclaim, offset, recoupment, or defense,
13 including an action to recover property or other thing of
14 value, recover damages sustained by the principal, eliminate
15 or modify tax liability, or seek an injunction, specific
16 performance, or other relief;

17 (2) bring an action to determine adverse claims or
18 intervene or otherwise participate in litigation;

19 (3) seek an attachment, garnishment, order of
20 arrest, or other preliminary, provisional, or intermediate
21 relief and use an available procedure to effect or satisfy a
22 judgment, order, or decree;

23 (4) make or accept a tender, offer of judgment, or
24 admission of facts, submit a controversy on an agreed
25 statement of facts, consent to examination, and bind the
26 principal in litigation;

1 (5) submit to alternative dispute resolution,
2 settle, and propose or accept a compromise;

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

15 (7) act for the principal with respect to bankruptcy
16 or insolvency, whether voluntary or involuntary, concerning
17 the principal or some other person, or with respect to a
18 reorganization, receivership, or application for the
19 appointment of a receiver or trustee which affects an interest
20 of the principal in property or other thing of value;

21 (8) pay a judgment, award, or order against the
22 principal or a settlement made in connection with a claim or
23 litigation; and

24 (9) receive money or other thing of value paid in
25 settlement of or as proceeds of a claim or litigation.

26 SECTION 26-1A-213. PERSONAL AND FAMILY MAINTENANCE.

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

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

9 (A) the principal's children;

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

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

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

17 (3) provide living quarters for the individuals
18 described in paragraph (1) by:

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

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

24 (4) provide normal domestic help, usual vacations
25 and travel expenses, and funds for shelter, clothing, food,
26 appropriate education, including postsecondary and vocational

1 education, and other current living costs for the individuals
2 described in paragraph (1);

3 (5) pay expenses for necessary health care and
4 custodial care on behalf of the individuals described in
5 paragraph (1);

6 (6) act as the principal's personal representative
7 pursuant to the Health Insurance Portability and
8 Accountability Act, Sections 1171 through 1179 of the Social
9 Security Act, 42 U.S.C. Section 1320d, as amended, and
10 applicable regulations, in making decisions related to the
11 past, present, or future payment for the provision of health
12 care consented to by the principal or anyone authorized under
13 the law of this state to consent to health care on behalf of
14 the principal;

15 (7) 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 (1);

19 (8) maintain credit and debit accounts for the
20 convenience of the individuals described in paragraph (1) and
21 open new accounts; and

22 (9) continue payments incidental to the membership
23 or affiliation of the principal in a religious institution,
24 club, society, order, or other organization or to continue
25 contributions to those organizations.

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

1 authority that an agent may or may not have with respect to
2 gifts under this chapter.

3 SECTION 26-1A-214. BENEFITS FROM GOVERNMENTAL
4 PROGRAMS OR CIVIL OR MILITARY SERVICE.

5 (a) In this section, "benefits from governmental
6 programs or civil or military service" means any benefit,
7 program, or assistance provided under a statute or regulation
8 including, but not limited to, Social Security, Medicare, and
9 Medicaid.

10 (b) Unless the power of attorney otherwise provides,
11 language in a power of attorney granting general authority
12 with respect to benefits from governmental programs or civil
13 or military service authorizes the agent to:

14 (1) execute vouchers in the name of the principal
15 for allowances and reimbursements payable by the United States
16 or a foreign government or by a state or subdivision of a
17 state to the principal, including allowances and
18 reimbursements for transportation of the individuals described
19 in Section 26-1A-213(a)(1), and for shipment of their
20 household effects;

21 (2) take possession and order the removal and
22 shipment of property of the principal from a post, warehouse,
23 depot, dock, or other place of storage or safekeeping, either
24 governmental or private, and execute and deliver a release,
25 voucher, receipt, bill of lading, shipping ticket,
26 certificate, or other instrument for that purpose;

1 (3) enroll in, apply for, select, reject, change,
2 amend, or discontinue, on the principal's behalf, a benefit or
3 program;

4 (4) prepare, file, and maintain a claim of the
5 principal for a benefit or assistance, financial or otherwise,
6 to which the principal may be entitled under a statute or
7 regulation;

8 (5) initiate, participate in, submit to alternative
9 dispute resolution, settle, oppose, or propose or accept a
10 compromise with respect to litigation concerning any benefit
11 or assistance the principal may be entitled to receive under a
12 statute or regulation; and

13 (6) receive the financial proceeds of a claim
14 described in paragraph (4) and conserve, invest, disburse, or
15 use for a lawful purpose anything so received.

16 SECTION 26-1A-215. RETIREMENT PLANS.

17 (a) In this section, "retirement plan" means a plan
18 or account created by an employer, the principal, or another
19 individual to provide retirement benefits or deferred
20 compensation of which the principal is a participant,
21 beneficiary, or owner, including a plan or account under the
22 following sections of the Internal Revenue Code:

23 (1) an individual retirement account under Internal
24 Revenue Code Section 408, 26 U.S.C. Section 408, as amended;

25 (2) a Roth individual retirement account under
26 Internal Revenue Code Section 408A, 26 U.S.C. Section 408A, as
27 amended;

1 (3) a deemed individual retirement account under
2 Internal Revenue Code Section 408(q), 26 U.S.C. Section
3 408(q), as amended;

4 (4) an annuity or mutual fund custodial account
5 under Internal Revenue Code Section 403(b), 26 U.S.C. Section
6 403(b), as amended;

7 (5) a pension, profit-sharing, stock bonus, or other
8 retirement plan qualified under Internal Revenue Code Section
9 401(a), 26 U.S.C. Section 401(a), as amended;

10 (6) a plan under Internal Revenue Code Section
11 457(b), 26 U.S.C. Section 457(b), as amended; and

12 (7) a non-qualified deferred compensation plan under
13 Internal Revenue Code Section 409A, 26 U.S.C. Section 409A, as
14 amended.

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

18 (1) select the form and timing of payments under a
19 retirement plan and withdraw benefits from a plan;

20 (2) make a rollover, including a direct
21 trustee-to-trustee rollover, of benefits from one retirement
22 plan to another;

23 (3) establish a retirement plan in the principal's
24 name;

25 (4) make contributions to a retirement plan;

26 (5) exercise investment powers available under a
27 retirement plan; and

1 (6) borrow from, sell assets to, or purchase assets
2 from a retirement plan.

3 SECTION 26-1A-216. TAXES. Unless the power of
4 attorney otherwise provides, language in a power of attorney
5 granting general authority with respect to taxes authorizes
6 the agent to:

7 (1) prepare, sign, and file federal, state, local,
8 and foreign income, gift, payroll, property, Federal Insurance
9 Contributions Act, and other tax returns, claims for refunds,
10 requests for extension of time, petitions regarding tax
11 matters, and any other tax-related documents, including
12 receipts, offers, waivers, consents, including consents and
13 agreements under Internal Revenue Code Section 2032A, 26
14 U.S.C. Section 2032A, as amended, closing agreements, and any
15 power of attorney required by the Internal Revenue Service or
16 other taxing authority with respect to a tax year upon which
17 the statute of limitations has not run and the following 25
18 tax years;

19 (2) pay taxes due, collect refunds, post bonds,
20 receive confidential information, and contest deficiencies
21 determined by the Internal Revenue Service or other taxing
22 authority;

23 (3) exercise any election available to the principal
24 under federal, state, local, or foreign tax law; and

25 (4) act for the principal in all tax matters for all
26 periods before the Internal Revenue Service, or other taxing
27 authority.

1 SECTION 26-1A-217. GIFTS.

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

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

10 (1) make outright to, or for the benefit of, a
11 person including the agent, a gift of any of the principal's
12 property, including by the exercise of a presently exercisable
13 general power of appointment held by the principal, in an
14 amount per donee not to exceed the annual dollar limits of the
15 federal gift tax exclusion under Internal Revenue Code Section
16 2503(b), 26 U.S.C. Section 2503(b), as amended, without regard
17 to whether the federal gift tax exclusion applies to the gift,
18 or if the principal's spouse agrees to consent to a split gift
19 pursuant to Internal Revenue Code Section 2513, 26 U.S.C.
20 2513, as amended, in an amount per donee not to exceed twice
21 the annual federal gift tax exclusion limit; and

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

1 (c) An agent may make a gift of the principal's
2 property only as the agent determines is consistent with the
3 principal's objectives if actually known by the agent and, if
4 unknown, as the agent determines is consistent with the
5 principal's best interest based on all relevant factors,
6 including:

7 (1) the value and nature of the principal's
8 property;

9 (2) the principal's foreseeable obligations and need
10 for maintenance;

11 (3) minimization of taxes, including income, estate,
12 inheritance, generation skipping transfer, and gift taxes;

13 (4) eligibility for a benefit, a program, or
14 assistance under a statute or regulation; and

15 (5) the principal's personal history of making or
16 joining in making gifts.

17 ARTICLE 3. FORMS

18 SECTION 26-1A-301. POWER OF ATTORNEY FORM. A
19 document substantially in the following form may be used to
20 create a power of attorney that has the meaning and effect
21 prescribed by this chapter.

22 ALABAMA POWER OF ATTORNEY FORM

23 IMPORTANT INFORMATION

24 This power of attorney authorizes another person
25 (your agent) to make decisions concerning your property for
26 you (the principal). Your agent will be able to make decisions
27 and act with respect to your property (including your money)

1 whether or not you are able to act for yourself. The meaning
2 of authority over subjects listed on this form is explained in
3 the Alabama Uniform Power of Attorney Act, Chapter 1A, Title
4 26, Code of Alabama 1975.

5 This power of attorney does not authorize the agent
6 to make health care decisions for you. Such powers are
7 governed by other applicable law.

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

12 Your agent is entitled to reimbursement of
13 reasonable expenses and reasonable compensation unless you
14 state otherwise in the Special Instructions.

15 This form provides for designation of one agent. If
16 you wish to name more than one agent you may name a co-agent
17 in the Special Instructions. Co-agents are not required to act
18 together unless you include that requirement in the Special
19 Instructions.

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

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

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

1 DESIGNATION OF AGENT

2 I _____

3 (Name of Principal)

4 name the following person as my agent:

5 Name of Agent: _____

6 Agent's Address: _____

7 Agent's Telephone Number: _____

8 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

11 Name of Successor Agent: _____

12 Successor Agent's Address: _____

13 Successor Agent's Telephone Number: _____

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

16 Name of Second Successor Agent: _____

17 Second Successor Agent's Address: _____

18 Second Successor Agent's Telephone Number: _____

19 GRANT OF GENERAL AUTHORITY

20 I grant my agent and any successor agent general
21 authority to act for me with respect to the following subjects
22 as defined in the Alabama Uniform Power of Attorney Act,
23 Chapter 1A, Title 26, Code of Alabama 1975:

24 If you wish to grant general authority over all of
25 the subjects enumerated in this section you may SIGN here:

26 _____

27 (Signature of Principal)

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OR

If you wish to grant specific authority over less than all subjects enumerated in this section you must INITIAL by each subject you want to include in the agent's authority:

_____Real Property as defined in Section 26-1A-204

_____Tangible Personal Property as defined in Section 26-1A-205

_____Stocks and Bonds as defined in Section 26-1A-206

_____Commodities and Options as defined in Section 26-1A-207

_____Banks and Other Financial Institutions as defined in Section 26-1A-208

_____Operation of Entity or Business as defined in Section 26-1A-209

_____Insurance and Annuities as defined in Section 26-1A-210

_____Estates, Trusts, and Other Beneficial Interests as defined in Section 26-1A-211

_____Claims and Litigation as defined in Section 26-1A-212

_____Personal and Family Maintenance as defined in Section 26-1A-213

_____Benefits from Governmental Programs or Civil or Military Service as defined in Section 26-1A-214

_____Retirement Plans as defined in Section 26-1A-215

1 _____Taxes as defined in Section 26-1A-216

2 _____Gifts as defined in Section 26-1A-217

3 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

4 My agent MAY NOT do any of the following specific
5 acts for me UNLESS I have INITIALED the specific authority
6 listed below:

7 (CAUTION: Granting any of the following will give
8 your agent the authority to take actions that could
9 significantly reduce your property or change how your property
10 is distributed at your death. INITIAL the specific authority
11 you WANT to give your agent.)

12 _____Create, amend, revoke, or terminate an inter
13 vivos trust, by trust or applicable law

14 _____Make a gift to which exceeds the monetary
15 limitations of Section 26-1A-217 of the Alabama Uniform Power
16 of Attorney Act, but subject to any special instructions in
17 this power of attorney

18 _____Create or change rights of survivorship

19 _____Create or change a beneficiary designation

20 _____Authorize another person to exercise the
21 authority granted under this power of attorney

22 _____Waive the principal's right to be a beneficiary
23 of a joint and survivor annuity, including a survivor benefit
24 under a retirement plan

25 _____Exercise fiduciary powers that the principal
26 has authority to delegate

27 LIMITATIONS ON AGENT'S AUTHORITY

1 An agent that is not my ancestor, spouse, or
2 descendant MAY NOT use my property to benefit the agent or a
3 person to whom the agent owes an obligation of support unless
4 I have included that authority in the Special Instructions.

5 Limitation of Power. Except for any special
6 instructions given herein to the agent to make gifts, the
7 following shall apply:

8 (a) Any power or authority granted to my Agent
9 herein shall be limited so as to prevent this Power of
10 Attorney from causing any Agent to be taxed on my income or
11 from causing my assets to be subject to a "general power of
12 appointment" by my Agent as defined in 26 U.S.C. §2041 and 26
13 U.S.C. §2514 of the Internal Revenue Code of 1986, as amended.

14 (b) My Agent shall have no power or authority
15 whatsoever with respect to any policy of insurance owned by me
16 on the life of my Agent, or any trust created by my Agent as
17 to which I am a trustee.

18 SPECIAL INSTRUCTIONS (OPTIONAL)

19 You may give special instructions on the following
20 lines. For your protection, if there are no special
21 instructions write NONE in this section.

22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

1 _____

2 EFFECTIVE DATE

3 This power of attorney is effective immediately
4 unless I have stated otherwise in the Special Instructions.

5 NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

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

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

11 Nominee's Address: _____

12 Nominee's Telephone Number: _____

13 Name of Nominee for [guardian] of my person:

14 _____

15 Nominee's Address: _____

16 Nominee's Telephone Number: _____

17 RELIANCE ON THIS POWER OF ATTORNEY

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

21 SIGNATURE AND ACKNOWLEDGMENT

22 _____

23 (Signature of Principal)

24 Your Signature Date: _____

25 Your Name Printed: _____

26 Your Address: _____

27 Your Telephone Number: _____

1 State of _____

2 [County] of _____

3 I, _____, a Notary Public, in and for the
4 County in this State, hereby certify that _____,
5 whose name is signed to the foregoing document, and who is
6 known to me, acknowledged before me on this day that, being
7 informed of the contents of the document, he or she executed
8 the same voluntarily on the day the same bears date.

9 Given under my hand this the ___ day of _____,
10 2____. _____ (Seal, if any)

11 Signature of Notary

12 My commission expires: _____

13 [This document prepared by:
14 _____]

15 IMPORTANT INFORMATION FOR AGENT

16 Agent's Duties

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

22 (1) do what you know the principal reasonably
23 expects you to do with the principal's property or, if you do
24 not know the principal's expectations, act in the principal's
25 best interest;

26 (2) act in good faith;

1 (3) do nothing beyond the authority granted in this
2 power of attorney; and

3 (4) disclose your identity as an agent whenever you
4 act for the principal by writing or printing the name of the
5 principal and signing your own name as "agent" in the
6 following manner:

7 (Principal's Name) by (Your Signature) as Agent

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

10 (1) act loyally for the principal's benefit;

11 (2) avoid conflicts that would impair your ability
12 to act in the principal's best interest;

13 (3) act with care, competence, and diligence;

14 (4) keep a record of all receipts, disbursements,
15 and transactions made on behalf of the principal;

16 (5) cooperate with any person that has authority to
17 make health care decisions for the principal to do what you
18 know the principal reasonably expects or, if you do not know
19 the principal's expectations, to act in the principal's best
20 interest; and

21 (6) attempt to preserve the principal's estate plan
22 if you know the plan and preserving the plan is consistent
23 with the principal's best interest.

24 Termination of Agent's Authority

25 You must stop acting on behalf of the principal if
26 you learn of any event that terminates this power of attorney
27 or your authority under this power of attorney. Events that

1 terminate a power of attorney or your authority to act under a
2 power of attorney include:

3 (1) death of the principal;

4 (2) the principal's revocation of the power of
5 attorney or your authority;

6 (3) the occurrence of a termination event stated in
7 the power of attorney;

8 (4) the purpose of the power of attorney is fully
9 accomplished; or

10 (5) if you are married to the principal, a legal
11 action is filed with a court to end your marriage, or for your
12 legal separation, unless the Special Instructions in this
13 power of attorney state that such an action will not terminate
14 your authority.

15 Liability of Agent

16 The meaning of the authority granted to you is
17 defined in the Alabama Uniform Power of Attorney Act, Chapter
18 1A, Title 26, Code of Alabama 1975. If you violate the Alabama
19 Uniform Power of Attorney Act, Chapter 1A, Title 26, Code of
20 Alabama 1975, or act outside the authority granted, you may be
21 liable for any damages caused by your violation.

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

25 SECTION 26-A1-302. AGENT'S CERTIFICATION. A document
26 substantially in the following format may be used by an agent
27 to certify facts concerning a power of attorney.

1 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
2 ATTORNEY AND AGENT'S AUTHORITY

3 State of _____

4 [County] of _____

5 I, _____ (Name
6 of Agent), [certify] under penalty of perjury that

7 _____

8 (Name of Principal)

9 granted me authority as an agent or successor agent
10 in a power of attorney dated _____.

11 I further [certify] that to my knowledge:

12 (1) the Principal is alive and has not revoked the
13 Power of Attorney or my authority to act under the Power of
14 Attorney and the Power of Attorney and my authority to act
15 under the Power of Attorney have not terminated;

16 (2) if the Power of Attorney was drafted to become
17 effective upon the happening of an event or contingency, the
18 event or contingency has occurred;

19 (3) if I was named as a successor agent, the prior
20 agent is no longer able or willing to serve; and

21 (4) _____

22 _____

23 _____

24 _____

25 (Insert other relevant statements)

26 SIGNATURE AND ACKNOWLEDGMENT

27 _____

1 Agent's Signature Date:
2 _____

3 Agent's Name Printed:
4 _____

5 Agent's Address:
6 _____

7 Agent's Telephone Number:
8 _____

9 This document was acknowledged before me on
10 _____,

11 (Date)

12 by _____ .
13 (Name of Agent)

14 _____ (Seal,

15 if any)

16 Signature of Notary

17 My commission expires: _____

18 [This document prepared by:
19 _____]

20 ARTICLE 4. MISCELLANEOUS PROVISIONS

21 SECTION 26-1A-401. UNIFORMITY OF APPLICATION AND
22 CONSTRUCTION. In applying and construing this uniform act,
23 consideration must be given to the need to promote uniformity
24 of the law with respect to its subject matter among the states
25 that enact it.

26 SECTION 26-1A-402. RELATION TO ELECTRONIC SIGNATURES
27 IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies,

1 limits, and supersedes the federal Electronic Signatures in
2 Global and National Commerce Act, 15 U.S.C. Section 7001 et
3 seq., but does not modify, limit, or supersede Section 101(c)
4 of that act, 15 U.S.C. Section 7001(c), or authorize
5 electronic delivery of any of the notices described in Section
6 103(b) of that act, 15 U.S.C. Section 7003(b).

7 SECTION 26-1A-403. EFFECT ON EXISTING POWERS OF
8 ATTORNEY. This chapter applies to all powers of attorney
9 executed on or after January 1, 2012.

10 SECTION 26-1A-404. HEALTH CARE POWERS OF ATTORNEY
11 EXECUTED ON OR AFTER JANUARY 1, 2012.

12 (a) This section applies to a power of attorney for
13 health care decisions executed on or after January 1, 2012.

14 (b) A durable power of attorney is a power of
15 attorney by which a principal designates another his or her
16 attorney in fact or agent in writing and the writing contains
17 the words "This power of attorney shall not be affected by
18 disability, incompetency, or incapacity of the principal" or
19 "This power of attorney shall become effective upon the
20 disability, incompetency, or incapacity of the principal" or
21 similar words showing the intent of the principal that the
22 authority conferred shall be exercisable notwithstanding the
23 principal's subsequent disability, incompetency, or
24 incapacity.

25 (c) (1) A principal may designate under a durable
26 power of attorney an individual who shall be empowered to make
27 health care decisions on behalf of the principal, in the

1 manner set forth in the Natural Death Act, if in the opinion
2 of the principal's attending physician the principal is no
3 longer able to give directions to health care providers.
4 Subject to the express limitation on the authority of the
5 attorney in fact contained in the durable power of attorney,
6 the attorney in fact may make any health care decision on
7 behalf of the principal that the principal could make but for
8 the lack of capacity of the principal to make a decision, but
9 not including psychosurgery, sterilization, abortion when not
10 necessary to preserve the life of the principal, or
11 involuntary hospitalization or treatment covered by Subtitle 2
12 of Title 22. A durable power of attorney executed pursuant to
13 this section may be revoked by written revocation signed and
14 dated by the principal or person acting at the direction of
15 the principal, or being obliterated, burnt, torn, or otherwise
16 destroyed or defaced in a manner indicating intention to
17 cancel or by a verbal expression of intent to revoke made in
18 the presence of a witness 19 years of age or older who signs
19 and dates a writing confirming an expression to revoke.

20 (2) Notwithstanding anything in this section to the
21 contrary, an attorney in fact shall have the authority to make
22 decisions regarding provision, withholding, or withdrawal of
23 life-sustaining treatment and artificially provided nutrition
24 and hydration but only a. if specifically authorized to do so
25 in the durable power of attorney, b. if the substantive
26 provisions of the durable power of attorney are in substantial
27 compliance and if the durable power of attorney is executed

1 and accepted in substantially the same form as set forth in
2 the Alabama Natural Death Act, and c. in instances of terminal
3 illness or injury or permanent unconsciousness, if the
4 authority is implemented in the manner permitted under the
5 Alabama Natural Death Act. All durable powers of attorney
6 executed prior to January 1, 2012, shall be effective to the
7 extent specifically provided therein notwithstanding the
8 provisions of this subsection. The decisions made by the
9 attorney in fact shall be implemented in accordance with the
10 same procedures set forth in the Alabama Natural Death Act for
11 health care proxies.

12 (3) Any authority granted to the spouse under a
13 durable power of attorney shall be revoked if the marriage of
14 the principal is dissolved or annulled, or if the parties are
15 legally separated or a party to divorce proceedings.

16 (4) Subject to any limitation in the durable power
17 of attorney, an attorney in fact may, for the purpose of
18 making a health care decision, request, review, and receive
19 any information, oral or written, regarding the principal's
20 physical or mental health, including medical and hospital
21 records, execute a release or other document required to
22 obtain the information, and consent to the disclosure of the
23 information.

24 (5) Under no circumstances shall the health care
25 provider of the principal or a nonrelative employee of the
26 health care provider of the principal make decisions under the
27 durable power of attorney. For purposes of this subsection, a

1 health care provider is defined as any person or entity who is
2 licensed, certified, registered, or otherwise authorized by
3 the laws of this state to administer or provide health care in
4 the ordinary course of business or in the practice of a
5 profession.

6 (6) No health care provider or any employee or agent
7 thereof who in good faith and pursuant to reasonable medical
8 standards follows the direction of a duly authorized attorney
9 in fact shall, as a result thereof, be subject to criminal or
10 civil liability, or be found to have committed an act of
11 unprofessional conduct for an action taken thereunder. Any
12 health care cost or liability for the cost associated with any
13 decision made pursuant to this section shall be the same as if
14 the health care were provided as a result of the principal's
15 decision relating to his or her own care.

16 (7) Any person who, without the consent of the
17 principal, willfully conceals, cancels, or alters a durable
18 power of attorney or any amendment or revocation of the agency
19 or who falsifies or forges a durable power of attorney,
20 amendment, or revocation for purposes of making health care
21 decisions shall be civilly liable. In addition, those persons
22 shall be subject to the criminal penalties set forth in the
23 Alabama Natural Death Act.

24 (8) Any individual acting as an attorney in fact
25 under a duly executed durable power of attorney, which
26 includes provisions which comply with subdivision (2)
27 regarding health care decisions who authorizes the providing,

1 withholding, or withdrawing of life-sustaining treatments or
2 artificially provided nutrition or hydration in accordance
3 with the durable power of attorney and pursuant to this
4 subsection shall not be subject to criminal prosecution or
5 civil liability for that action.

6 (9) Nothing in this subsection regarding the
7 appointment of an attorney in fact with respect to health care
8 decisions shall impair or supersede any legal right or legal
9 responsibility which any person may have, under case law,
10 common law, or statutory law to effect the provision,
11 withholding, or withdrawal of life-sustaining treatment or
12 artificially provided nutrition and hydration in any lawful
13 manner. In such respect, the provisions of this subsection are
14 cumulative.

15 (10) No physician or other health care provider, and
16 no health care service plan, health maintenance organization,
17 insurer issuing disability or life or health insurance,
18 self-insured employee welfare benefit plan, nonprofit medical
19 service corporation, or mutual nonprofit hospital or hospital
20 service corporation shall require any person to execute a
21 durable power of attorney with respect to health care
22 decisions as a condition for being insured for, or receiving,
23 health care services.

24 (11) Nothing in this subsection regarding the
25 appointment of an attorney in fact with respect to health care
26 decisions shall impair or supersede the jurisdiction of the
27 circuit court in the county where a patient is undergoing

1 treatment to determine whether life-sustaining treatment or
2 artificially provided nutrition and hydration shall be
3 withheld or withdrawn in circumstances not governed by this
4 subsection.

5 (12) This subsection shall create no presumption
6 concerning the intention of an individual, who has not
7 executed a durable power of attorney regarding health care
8 decisions, or any other advance directive for health care, or
9 if the durable power of attorney, or advance directive for
10 health care is executed, the durable power of attorney or
11 advance directive for health care is ambiguous or silent as to
12 a particular health care matter, to consent to the use or
13 withdrawing or withholding of life-sustaining treatment or
14 artificially provided nutrition and hydration. The terms
15 "person" and "advance directive for health care" shall have
16 the meaning as under Sections 22-8A-1, et seq.

17 (13) A durable power of attorney executed in another
18 state in compliance with the law of that state or of this
19 state is valid for purposes of this subsection, but this
20 subsection does not authorize the administration, withholding,
21 or withdrawal of health care otherwise prohibited by the laws
22 of this state.

23 (14) Any durable power of attorney regarding health
24 care decisions made prior to January 1, 2012, shall be given
25 effect provided that the durable power of attorney was legally
26 effective when written and artificially provided nutrition and

1 hydration shall not be withdrawn pursuant to the durable power
2 of attorney unless specifically authorized herein.

3 Section 2. Section 26-1-2 of the Code of Alabama
4 1975, is amended to read as follows:

5 "§26-1-2.

6 "(a) A durable power of attorney is a power of
7 attorney by which a principal designates another his or her
8 attorney in fact or agent in writing and the writing contains
9 the words "This power of attorney shall not be affected by
10 disability, incompetency, or incapacity of the principal" or
11 "This power of attorney shall become effective upon the
12 disability, incompetency, or incapacity of the principal" or
13 similar words showing the intent of the principal that the
14 authority conferred shall be exercisable notwithstanding the
15 principal's subsequent disability, incompetency, or
16 incapacity.

17 "(b) All acts done by an attorney in fact pursuant
18 to a durable power of attorney during any period of
19 disability, incompetency, or incapacity of the principal have
20 the same effect and inure to the benefit of and bind the
21 principal and his or her successors in interest as if the
22 principal was competent, not disabled, and not incapacitated.

23 "(c) (1) If, following execution of a durable power
24 of attorney, a court of the domicile of the principal appoints
25 a guardian, curator, or other fiduciary charged with the
26 management of all the property of the principal or all of his
27 or her property except specified exclusions, the attorney in

1 fact is accountable to the fiduciary as well as to the
2 principal. The fiduciary has the same power to revoke or amend
3 the power of attorney that the principal would have had if he
4 or she was not disabled, incompetent, or incapacitated.

5 "(2) A principal may nominate, by a durable power of
6 attorney, the guardian, curator, or other fiduciary for
7 consideration by the court if proceedings to appoint a
8 fiduciary for the principal are thereafter commenced. The
9 court shall make its appointment in accordance with the most
10 recent nomination of the principal in a durable power of
11 attorney except for good cause or disqualification.

12 "(d) (1) The death of a principal who has executed a
13 written power of attorney, durable or otherwise, does not
14 revoke or terminate the agency as to the attorney in fact or
15 other person who, without actual knowledge of the death of the
16 principal, acts in good faith under the power. Any action so
17 taken, unless otherwise invalid or unenforceable, binds the
18 successors in interest of the principal.

19 "(2) The disability, incompetency, or incapacity of
20 a principal who has previously executed a written power of
21 attorney that is not a durable power does not revoke or
22 terminate the agency as to the attorney in fact or other
23 person who, without actual knowledge of the disability,
24 incompetency, or incapacity of the principal, acts in good
25 faith under the power. Any action so taken, unless otherwise
26 invalid or unenforceable, binds the principal and his or her
27 successors in interest.

1 "(e) As to acts undertaken in good faith reliance
2 thereon, an affidavit executed by the attorney in fact under a
3 power of attorney, durable or otherwise, stating that he or
4 she did not have, at the time of the exercise of the power,
5 actual knowledge of the termination of the power by revocation
6 or of the death, disability, incompetency, or incapacity of
7 the principal is conclusive proof of the nonrevocation or
8 nontermination of the power at that time. If the exercise of
9 the power of attorney requires execution and delivery of any
10 instrument that is recordable, the affidavit, when
11 authenticated for record, is likewise recordable.

12 "(f) This section shall not affect any provision in
13 a power of attorney for its termination by expiration of time
14 or occurrence of an event other than express revocation or a
15 change in the principal's capacity.

16 "(g) (1) A principal may designate under a durable
17 power of attorney an individual who shall be empowered to make
18 health care decisions on behalf of the principal, in the
19 manner set forth in the Natural Death Act, if in the opinion
20 of the principal's attending physician the principal is no
21 longer able to give directions to health care providers.
22 Subject to the express limitation on the authority of the
23 attorney in fact contained in the durable power of attorney,
24 the attorney in fact may make any health care decision on
25 behalf of the principal that the principal could make but for
26 the lack of capacity of the principal to make a decision, but
27 not including psychosurgery, sterilization, abortion when not

1 necessary to preserve the life of the principal, or
2 involuntary hospitalization or treatment covered by Subtitle 2
3 of Title 22. A durable power of attorney executed pursuant to
4 this section may be revoked by written revocation signed and
5 dated by the principal or person acting at the direction of
6 the principal, or being obliterated, burnt, torn, or otherwise
7 destroyed or defaced in a manner indicating intention to
8 cancel or by a verbal expression of intent to revoke made in
9 the presence of a witness 19 years of age or older who signs
10 and dates a writing confirming an expression to revoke.

11 "(2) Notwithstanding anything in this section to the
12 contrary, an attorney in fact shall have the authority to make
13 decisions regarding provision, withholding, or withdrawal of
14 life-sustaining treatment and artificially provided nutrition
15 and hydration but only a. if specifically authorized to do so
16 in the durable power of attorney, b. if the substantive
17 provisions of the durable power of attorney are in substantial
18 compliance and if the durable power of attorney is executed
19 and accepted in substantially the same form as set forth in
20 the Alabama Natural Death Act, and c. in instances of terminal
21 illness or injury or permanent unconsciousness, if the
22 authority is implemented in the manner permitted under the
23 Alabama Natural Death Act. All durable powers of attorney
24 executed prior to May 8, 1997, shall be effective to the
25 extent specifically provided therein notwithstanding the
26 provisions of this subsection. The decisions made by the
27 attorney in fact shall be implemented in accordance with the

1 same procedures set forth in the Alabama Natural Death Act for
2 health care proxies.

3 "(3) Any authority granted to the spouse under a
4 durable power of attorney shall be revoked if the marriage of
5 the principal is dissolved or annulled, or if the parties are
6 legally separated or a party to divorce proceedings.

7 "(4) Subject to any limitation in the durable power
8 of attorney, an attorney in fact may, for the purpose of
9 making a health care decision, request, review, and receive
10 any information, oral or written, regarding the principal's
11 physical or mental health, including medical and hospital
12 records, execute a release or other document required to
13 obtain the information, and consent to the disclosure of the
14 information.

15 "(5) Under no circumstances shall the health care
16 provider of the principal or a nonrelative employee of the
17 health care provider of the principal make decisions under the
18 durable power of attorney. For purposes of this subsection, a
19 health care provider is defined as any person or entity who is
20 licensed, certified, registered, or otherwise authorized by
21 the laws of this state to administer or provide health care in
22 the ordinary course of business or in the practice of a
23 profession.

24 "(6) No health care provider or any employee or
25 agent thereof who in good faith and pursuant to reasonable
26 medical standards follows the direction of a duly authorized
27 attorney in fact shall, as a result thereof, be subject to

1 criminal or civil liability, or be found to have committed an
2 act of unprofessional conduct for an action taken thereunder.
3 Any health care cost or liability for the cost associated with
4 any decision made pursuant to this section shall be the same
5 as if the health care were provided as a result of the
6 principal's decision relating to his or her own care.

7 "(7) Any person who, without the consent of the
8 principal, willfully conceals, cancels, or alters a durable
9 power of attorney or any amendment or revocation of the agency
10 or who falsifies or forges a durable power of attorney,
11 amendment, or revocation for purposes of making health care
12 decisions shall be civilly liable. In addition, those persons
13 shall be subject to the criminal penalties set forth in the
14 Alabama Natural Death Act.

15 "(8) Any individual acting as an attorney in fact
16 under a duly executed durable power of attorney, which
17 includes provisions which comply with subdivision (2)
18 regarding health care decisions who authorizes the providing,
19 withholding, or withdrawing of life-sustaining treatments or
20 artificially provided nutrition or hydration in accordance
21 with the durable power of attorney and pursuant to this
22 subsection shall not be subject to criminal prosecution or
23 civil liability for that action.

24 "(9) Nothing in this subsection regarding the
25 appointment of an attorney in fact with respect to health care
26 decisions shall impair or supersede any legal right or legal
27 responsibility which any person may have, under case law,

1 common law, or statutory law to effect the provision,
2 withholding, or withdrawal of life-sustaining treatment or
3 artificially provided nutrition and hydration in any lawful
4 manner. In such respect, the provisions of this subsection are
5 cumulative.

6 "(10) No physician or other health care provider,
7 and no health care service plan, health maintenance
8 organization, insurer issuing disability or life or health
9 insurance, self-insured employee welfare benefit plan,
10 nonprofit medical service corporation, or mutual nonprofit
11 hospital or hospital service corporation shall require any
12 person to execute a durable power of attorney with respect to
13 health care decisions as a condition for being insured for, or
14 receiving, health care services.

15 "(11) Nothing in this subsection regarding the
16 appointment of an attorney in fact with respect to health care
17 decisions shall impair or supersede the jurisdiction of the
18 circuit court in the county where a patient is undergoing
19 treatment to determine whether life-sustaining treatment or
20 artificially provided nutrition and hydration shall be
21 withheld or withdrawn in circumstances not governed by this
22 subsection.

23 "(12) This subsection shall create no presumption
24 concerning the intention of an individual, who has not
25 executed a durable power of attorney regarding health care
26 decisions, or any other advance directive for health care, or
27 if the durable power of attorney, or advance directive for

1 health care is executed, the durable power of attorney or
2 advance directive for health care is ambiguous or silent as to
3 a particular health care matter, to consent to the use or
4 withdrawing or withholding of life-sustaining treatment or
5 artificially provided nutrition and hydration. The terms
6 "person" and "advance directive for health care" shall have
7 the meaning as under Sections 22-8A-1, et seq.

8 "(13) A durable power of attorney executed in
9 another state in compliance with the law of that state or of
10 this state is valid for purposes of this subsection, but this
11 subsection does not authorize the administration, withholding,
12 or withdrawal of health care otherwise prohibited by the laws
13 of this state.

14 "(14) Any durable power of attorney regarding health
15 care decisions made prior to May 8, 1997, shall be given
16 effect provided that the durable power of attorney was legally
17 effective when written and artificially provided nutrition and
18 hydration shall not be withdrawn pursuant to the durable power
19 of attorney unless specifically authorized herein.

20 "(h) This provision applies to all powers executed
21 prior to January 1, 2012."

22 Section 3. This act takes effect January 1, 2012.

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Senate

Read for the first time and referred to the Senate
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Yeas 34
Nays 0

Patrick Harris
Secretary