

1 SB53
2 125907-5
3 By Senators Orr and Irons
4 RFD: Judiciary
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1 SB53

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4 ENROLLED, An Act,

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 CHAPTER 1A. ALABAMA UNIFORM POWER OF ATTORNEY ACT

25 ARTICLE 1. GENERAL PROVISIONS

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

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

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

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

11 (3) "Electronic" means relating to technology having
12 electrical, digital, magnetic, wireless, optical,
13 electromagnetic, or similar capabilities.

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

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

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

20 (B) is:

21 (i) missing;

22 (ii) detained, including incarcerated in a penal
23 system; or

24 (iii) outside the United States and unable to
25 return.

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

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

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

23 (9) "Principal" means an individual who grants
24 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

1 to or for the benefit of a creditor in connection with a
2 credit transaction;

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

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

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

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

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

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

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

4 (b) A power of attorney executed in this state
5 before January 1, 2012, is valid if its execution complied
6 with the law of this state as it existed at the time of
7 execution.

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

11 (1) the law of the jurisdiction that determines the
12 meaning and effect of the power of attorney pursuant to
13 Section 26-1A-107;

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

16 (3) Alabama law.

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

21 SECTION 26-1A-107. MEANING AND EFFECT OF POWER OF
22 ATTORNEY. The meaning and effect of a power of attorney is
23 determined by the law of the jurisdiction indicated in the
24 power of attorney and, in the absence of an indication of

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

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

5 (a) In a power of attorney, a principal may nominate
6 a conservator of the principal's estate or guardian of the
7 principal's person for consideration by the court, if
8 protective proceedings for the principal's estate or person
9 are begun after the principal executes the power of attorney.
10 Except for good cause shown or disqualification, the court
11 shall make its appointment in accordance with the principal's
12 most recent nomination.

13 (b) If, after a principal executes a power of
14 attorney, a court appoints a conservator of the principal's
15 estate or other fiduciary charged with the management of all
16 the property of the principal or all of his or her property
17 except specified exclusions, the agent is accountable to the
18 fiduciary as well as to the principal. In such event, the
19 fiduciary has the same power to revoke or amend the power of
20 attorney that the principal would have had if he or she was
21 not disabled, incompetent, or incapacitated.

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

23 (a) A power of attorney is effective when executed
24 unless the principal provides in the power of attorney that it

1 becomes effective at a future date or upon the occurrence of a
2 future event or contingency.

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

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

15 (1) a physician or licensed psychologist that the
16 principal is incapacitated within the meaning of Section
17 26-1A-102(5) (A); or

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

21 (d) A person authorized by the principal in the
22 power of attorney to determine that the principal is
23 incapacitated may act as the principal's personal
24 representative pursuant to the Health Insurance Portability
25 and Accountability Act, Sections 1171 through 1179 of the

1 Social Security Act, 42 U.S.C. Section 1320d, as amended, and
2 applicable regulations, to obtain access to the principal's
3 health care information and communicate with the principal's
4 health care provider.

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

7 (a) A power of attorney terminates when:

8 (1) the principal dies;

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

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

12 (4) the power of attorney provides that it
13 terminates;

14 (5) the purpose of the power of attorney is
15 accomplished;

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

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

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

22 (1) the principal revokes the authority;

23 (2) the agent dies, becomes incapacitated, or
24 resigns;

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

5 (4) the power of attorney terminates.

6 (c) Unless the power of attorney otherwise provides,
7 an agent's authority is exercisable until the authority
8 terminates under subsection (b), notwithstanding a lapse of
9 time since the execution of the power of attorney.

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

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

23 (f) The execution of a power of attorney does not
24 revoke a power of attorney previously executed by the
25 principal unless the subsequent power of attorney provides

1 that the previous power of attorney is revoked or that all
2 other powers of attorney are revoked.

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

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

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

15 (1) has the same authority as that granted to the
16 original agent; and

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

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

1 (d) An agent that has accepted appointment and has
2 actual knowledge of a breach or imminent breach of fiduciary
3 duty by another agent shall notify the principal and, if the
4 principal is incapacitated, take any action reasonably
5 appropriate in the circumstances to safeguard the principal's
6 best interest. An agent that fails to notify the principal or
7 take action as required by this subsection is liable for the
8 reasonably foreseeable damages that could have been avoided if
9 the agent had notified the principal or taken such action.

10 SECTION 26-1A-112. REIMBURSEMENT AND COMPENSATION OF
11 AGENT. Unless the power of attorney otherwise provides, an
12 agent is entitled to reimbursement of expenses reasonably
13 incurred on behalf of the principal and to compensation that
14 is reasonable under the circumstances.

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

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

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

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

1 (2) act in good faith; and

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

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

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

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

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

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

14 (5) cooperate with a person that has authority to
15 make health care decisions for the principal to carry out the
16 principal's reasonable expectations to the extent actually
17 known by the agent and, otherwise, act in the principal's best
18 interest; and

19 (6) attempt to preserve the principal's estate plan,
20 to the extent actually known by the agent, if preserving the
21 plan is consistent with the principal's best interest based on
22 all relevant factors, including:

23 (A) the value and nature of the principal's
24 property;

1 (B) the principal's foreseeable obligations and need
2 for maintenance;

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

5 (D) eligibility for a benefit, a program, or
6 assistance under a statute or regulation.

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

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

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

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

24 (g) An agent that exercises authority to delegate to
25 another person the authority granted by the principal or that

1 engages another person on behalf of the principal is not
2 liable for an act, error of judgment, or default of that
3 person if the agent exercises care, competence, and diligence
4 in selecting and monitoring the person.

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

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

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

1 (9) a person asked to accept the power of attorney;
2 and

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

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

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

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

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

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

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

4 (2) if there is no person described in paragraph
5 (1):

6 (A) the principal's caregiver;

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

9 (C) a governmental agency having authority to
10 protect the welfare of the principal.

11 SECTION 26-1A-119. ACCEPTANCE OF AND RELIANCE UPON
12 ACKNOWLEDGED POWER OF ATTORNEY.

13 (a) For purposes of this section and Section
14 26-1A-120, "acknowledged" means purportedly verified before a
15 notary public or other individual authorized to take
16 acknowledgments and "reasonable time" shall not be deemed to
17 be less than seven business days.

18 (b) A person that effects a transaction in reliance
19 upon an acknowledged power of attorney without actual
20 knowledge that the signature is not genuine may rely upon the
21 presumption under Section 26-1A-105 that the signature is
22 genuine.

23 (c) A person that effects a transaction in reliance
24 upon an acknowledged power of attorney without actual
25 knowledge that the power of attorney is void, invalid, or

1 terminated, that the purported agent's authority is void,
2 invalid, or terminated, or that the agent is exceeding or
3 improperly exercising the agent's authority is fully
4 exonerated from any liability for effecting the transaction in
5 reliance upon the power of attorney as if the power of
6 attorney were genuine, valid, and still in effect, the agent's
7 authority were genuine, valid, and still in effect, and the
8 agent had not exceeded and had properly exercised the
9 authority.

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

14 (1) an agent's certification under penalty of
15 perjury of any factual matter concerning the principal, agent,
16 or power of attorney;

17 (2) an acknowledged or properly authenticated
18 English translation of the power of attorney if the power of
19 attorney contains, in whole or in part, language other than
20 English; and

21 (3) an opinion of counsel as to any matter of law
22 concerning the power of attorney if the person making the
23 request provides in a writing or other record the reason for
24 the request.

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

6 (f) For purposes of this section and Section
7 26-1A-120, a person that conducts activities through employees
8 is without actual knowledge of a fact relating to a power of
9 attorney, a principal, or an agent if the employee effecting
10 the transaction in reliance upon the power of attorney is
11 without actual knowledge of the fact.

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

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

15 (1) a person shall either effect a requested
16 transaction in reliance upon an acknowledged power of attorney
17 or request a certification, a translation, or an opinion of
18 counsel under Section 26-1A-119(d) within a reasonable time
19 after presentation of the power of attorney and a request to
20 effect the transaction;

21 (2) if a person requests a certification, a
22 translation, or an opinion of counsel under Section
23 26-1A-119(d), the person shall effect the transaction in
24 reliance upon the power of attorney within a reasonable time

1 after receipt of the certification, translation, or opinion of
2 counsel; and

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

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

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

11 (2) if the person in good faith believes engaging in
12 the transaction with the agent or the principal in the same
13 circumstances would be inconsistent with law or any rule or
14 regulation of any government or any governmental agency or
15 instrumentality;

16 (3) if the person has actual knowledge of the fact
17 that the power of attorney is void, invalid, or terminated,
18 that the agent's authority is void, invalid, or terminated, or
19 that the agent is exceeding or improperly exercising the
20 agent's authority;

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

24 (5) if the person in good faith believes that the
25 power of attorney is void, invalid, or terminated, that the

1 agent's authority is void, invalid, or terminated, or that the
2 agent is exceeding or improperly exercising the agent's
3 authority, whether or not a certification, a translation, or
4 an opinion of counsel under Section 26-1A-119(d) has been
5 requested or provided; or

6 (6) if the person makes, or has actual knowledge
7 that another person has made, a report to the Department of
8 Human Resources stating a belief that the principal may be
9 subject to physical or financial abuse, neglect, exploitation,
10 or abandonment by the agent or a person acting for or with the
11 agent.

12 (c) A person that refuses in violation of this
13 section to effect a transaction in reliance upon an
14 acknowledged power of attorney is subject to, as its sole
15 liability with respect to such a refusal notwithstanding
16 Section 26-1A-123:

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

19 (2) liability for reasonable attorney's fees and
20 costs incurred in any action or proceeding that confirms the
21 validity of the power of attorney or mandates that the person
22 effect such transaction in reliance upon the power of
23 attorney.

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

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

4 SECTION 26-1A-122. LAWS APPLICABLE TO FINANCIAL
5 INSTITUTIONS AND ENTITIES. This chapter does not supersede any
6 other law applicable to financial institutions or other
7 entities, and the other law controls if inconsistent with this
8 chapter.

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

13 ARTICLE 2. AUTHORITY

14 SECTION 26-1A-201. AUTHORITY THAT REQUIRES SPECIFIC
15 GRANT; GRANT OF GENERAL AUTHORITY.

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

22 (1) create, amend, revoke, or terminate an inter
23 vivos trust;

24 (2) [reserved];

25 (3) create or change rights of survivorship;

1 (4) create or change a beneficiary designation;

2 (5) delegate authority granted under the power of
3 attorney;

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

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

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

18 (c) Subject to subsections (a), (b), (d), and (e),
19 if a power of attorney grants to an agent authority to do all
20 acts that a principal could do, the agent has the general
21 authority described in Sections 26-1A-204 through 26-1A-217,
22 irrespective of whether the power of attorney references any
23 of the transactions described in those sections.

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

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

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

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

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

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

24 (b) A reference in a power of attorney to general
25 authority with respect to the descriptive term for a subject

1 in Sections 26-1A-204 through 26-1A-217 or a citation to a
2 section of Sections 26-1A-204 through 26-1A-217 incorporates
3 the entire section as if it were set out in full in the power
4 of attorney.

5 (c) A principal may modify authority incorporated by
6 reference.

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

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

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

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

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

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

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

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

24 (3) pledge or mortgage an interest in real property
25 or right incident to real property as security to borrow money

1 or pay, renew, or extend the time of payment of a debt of the
2 principal or a debt guaranteed by the principal;

3 (4) release, assign, satisfy, or enforce by
4 litigation or otherwise a mortgage, deed of trust, conditional
5 sale contract, encumbrance, lien, or other claim to real
6 property which exists or is asserted;

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

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

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

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

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

19 (6) use, develop, alter, replace, remove, erect, or
20 install structures or other improvements upon real property in
21 or incident to which the principal has, or claims to have, an
22 interest or right;

23 (7) participate in a reorganization with respect to
24 real property or an entity that owns an interest in or right
25 incident to real property and receive, and hold, and act with

1 respect to stocks and bonds or other property received in a
2 plan of reorganization, including:

3 (A) selling or otherwise disposing of them;

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

6 (C) exercising any voting rights in person or by
7 proxy;

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

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

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

14 Unless the power of attorney otherwise provides, language in a
15 power of attorney granting general authority with respect to
16 tangible personal property authorizes the agent to:

17 (1) demand, buy, receive, accept as a gift or as
18 security for an extension of credit, or otherwise acquire or
19 reject ownership or possession of tangible personal property
20 or an interest in tangible personal property;

21 (2) sell; exchange; convey with or without
22 covenants, representations, or warranties; quitclaim; release;
23 surrender; create a security interest in; grant options
24 concerning; lease; sublease; or, otherwise dispose of tangible

1 personal property or an interest in tangible personal
2 property;

3 (3) grant a security interest in tangible personal
4 property or an interest in tangible personal property as
5 security to borrow money or pay, renew, or extend the time of
6 payment of a debt of the principal or a debt guaranteed by the
7 principal;

8 (4) release, assign, satisfy, or enforce by
9 litigation or otherwise, a security interest, lien, or other
10 claim on behalf of the principal, with respect to tangible
11 personal property or an interest in tangible personal
12 property;

13 (5) manage or conserve tangible personal property or
14 an interest in tangible personal property on behalf of the
15 principal, including:

16 (A) insuring against liability or casualty or other
17 loss;

18 (B) obtaining or regaining possession of or
19 protecting the property or interest, by litigation or
20 otherwise;

21 (C) paying, assessing, compromising, or contesting
22 taxes or assessments or applying for and receiving refunds in
23 connection with taxes or assessments;

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

1 (E) storing the property for hire or on a gratuitous
2 bailment; and

3 (F) using and making repairs, alterations, or
4 improvements to the property; and

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

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

11 (1) buy, sell, and exchange stocks and bonds;

12 (2) establish, continue, modify, or terminate an
13 account with respect to stocks and bonds;

14 (3) pledge stocks and bonds as security to borrow,
15 pay, renew, or extend the time of payment of a debt of the
16 principal;

17 (4) receive certificates and other evidences of
18 ownership with respect to stocks and bonds; and

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

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

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

5 (2) establish, continue, modify, and terminate
6 option accounts.

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

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

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

19 (3) contract for services available from a financial
20 institution, including renting a safe deposit box or space in
21 a vault;

22 (4) withdraw, by check, order, electronic funds
23 transfer, or otherwise, money or property of the principal
24 deposited with or left in the custody of a financial
25 institution;

1 (5) receive statements of account, vouchers,
2 notices, and similar documents from a financial institution
3 and act with respect to them;

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

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

10 (8) make, assign, draw, endorse, discount,
11 guarantee, and negotiate promissory notes, checks, drafts, and
12 other negotiable or nonnegotiable paper of the principal or
13 payable to the principal or the principal's order, transfer
14 money, receive the cash or other proceeds of those
15 transactions, and accept a draft drawn by a person upon the
16 principal and pay it when due;

17 (9) receive for the principal and act upon a sight
18 draft, warehouse receipt, or other document of title whether
19 tangible or electronic, or other negotiable or nonnegotiable
20 instrument;

21 (10) apply for, receive, and use letters of credit,
22 credit and debit cards, electronic transaction authorizations,
23 and traveler's checks from a financial institution and give an
24 indemnity or other agreement in connection with letters of
25 credit; and

1 (11) consent to an extension of the time of payment
2 with respect to commercial paper or a financial transaction
3 with a financial institution.

4 SECTION 26-1A-209. OPERATION OF ENTITY OR BUSINESS.
5 Subject to the terms of a document or an agreement governing
6 an entity or an entity ownership interest, and unless the
7 power of attorney otherwise provides, language in a power of
8 attorney granting general authority with respect to operation
9 of an entity or business authorizes the agent to:

10 (1) operate, buy, sell, enlarge, reduce, or
11 terminate an ownership interest;

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

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

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

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

24 (6) initiate, participate in, submit to alternative
25 dispute resolution, settle, oppose, or propose or accept a

1 compromise with respect to litigation to which the principal
2 is a party concerning stocks and bonds;

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

5 (A) continue, modify, renegotiate, extend, and
6 terminate a contract made by or on behalf of the principal
7 with respect to the entity or business before execution of the
8 power of attorney;

9 (B) determine:

10 (i) the location of its operation;

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

12 (iii) the methods of manufacturing, selling,
13 merchandising, financing, accounting, and advertising employed
14 in its operation;

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

16 (v) the mode of engaging, compensating, and dealing
17 with its employees and accountants, attorneys, or other
18 advisors;

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

23 (D) demand and receive money due or claimed by the
24 principal or on the principal's behalf in the operation of the

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

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

5 (9) join in a plan of reorganization, consolidation,
6 conversion, domestication, or merger of the entity or
7 business;

8 (10) sell or liquidate all or part of an entity or
9 business;

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

12 (12) prepare, sign, file, and deliver reports,
13 compilations of information, returns, or other papers with
14 respect to an entity or business and make related payments;
15 and

16 (13) pay, compromise, or contest taxes, assessments,
17 fines, or penalties and perform any other act to protect the
18 principal from illegal or unnecessary taxation, assessments,
19 fines, or penalties, with respect to an entity or business,
20 including attempts to recover, in any manner permitted by law,
21 money paid before or after the execution of the power of
22 attorney.

23 SECTION 26-1A-210. INSURANCE AND ANNUITIES. Unless
24 the power of attorney otherwise provides, language in a power

1 of attorney granting general authority with respect to
2 insurance and annuities authorizes the agent to:

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

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

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

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

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

20 (6) exercise an election;

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

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

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

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

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

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

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

17 SECTION 26-1A-211. ESTATES, TRUSTS, AND OTHER
18 BENEFICIAL INTERESTS.

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

24 (b) Unless the power of attorney otherwise provides,
25 language in a power of attorney granting general authority

1 with respect to estates, trusts, and other beneficial
2 interests authorizes the agent to:

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

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

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

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

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

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

23 (7) transfer an interest of the principal in real
24 property, stocks and bonds, accounts with financial
25 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

1 statement of facts, consent to examination, and bind the
2 principal in litigation;

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

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

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

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

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

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

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

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

12 (A) the principal's children;

13 (B) other individuals legally entitled to be
14 supported by the principal; and

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

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

20 (3) provide living quarters for the individuals
21 described in paragraph (1) by:

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

23 (B) paying the operating costs, including interest,
24 amortization payments, repairs, improvements, and taxes, for

1 premises owned by the principal or occupied by those
2 individuals;

3 (4) provide normal domestic help, usual vacations
4 and travel expenses, and funds for shelter, clothing, food,
5 appropriate education, including postsecondary and vocational
6 education, and other current living costs for the individuals
7 described in paragraph (1);

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

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

20 (7) continue any provision made by the principal for
21 automobiles or other means of transportation, including
22 registering, licensing, insuring, and replacing them, for the
23 individuals described in paragraph (1);

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

4 (9) continue payments incidental to the membership
5 or affiliation of the principal in a religious institution,
6 club, society, order, or other organization or to continue
7 contributions to those organizations.

8 (b) Authority with respect to personal and family
9 maintenance is neither dependent upon, nor limited by,
10 authority that an agent may or may not have with respect to
11 gifts under this chapter.

12 SECTION 26-1A-214. BENEFITS FROM GOVERNMENTAL
13 PROGRAMS OR CIVIL OR MILITARY SERVICE.

14 (a) In this section, "benefits from governmental
15 programs or civil or military service" means any benefit,
16 program, or assistance provided under a statute or regulation
17 including, but not limited to, Social Security, Medicare, and
18 Medicaid.

19 (b) Unless the power of attorney otherwise provides,
20 language in a power of attorney granting general authority
21 with respect to benefits from governmental programs or civil
22 or military service authorizes the agent to:

23 (1) execute vouchers in the name of the principal
24 for allowances and reimbursements payable by the United States
25 or a foreign government or by a state or subdivision of a

1 state to the principal, including allowances and
2 reimbursements for transportation of the individuals described
3 in Section 26-1A-213(a)(1), and for shipment of their
4 household effects;

5 (2) take possession and order the removal and
6 shipment of property of the principal from a post, warehouse,
7 depot, dock, or other place of storage or safekeeping, either
8 governmental or private, and execute and deliver a release,
9 voucher, receipt, bill of lading, shipping ticket,
10 certificate, or other instrument for that purpose;

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

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

18 (5) initiate, participate in, submit to alternative
19 dispute resolution, settle, oppose, or propose or accept a
20 compromise with respect to litigation concerning any benefit
21 or assistance the principal may be entitled to receive under a
22 statute or regulation; and

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

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

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

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

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

13 (3) a deemed individual retirement account under
14 Internal Revenue Code Section 408(q), 26 U.S.C. Section
15 408(q), as amended;

16 (4) an annuity or mutual fund custodial account
17 under Internal Revenue Code Section 403(b), 26 U.S.C. Section
18 403(b), as amended;

19 (5) a pension, profit-sharing, stock bonus, or other
20 retirement plan qualified under Internal Revenue Code Section
21 401(a), 26 U.S.C. Section 401(a), as amended;

22 (6) a plan under Internal Revenue Code Section
23 457(b), 26 U.S.C. Section 457(b), as amended; and

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

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

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

9 (2) make a rollover, including a direct
10 trustee-to-trustee rollover, of benefits from one retirement
11 plan to another;

12 (3) establish a retirement plan in the principal's
13 name;

14 (4) make contributions to a retirement plan;

15 (5) exercise investment powers available under a
16 retirement plan; and

17 (6) borrow from, sell assets to, or purchase assets
18 from a retirement plan.

19 SECTION 26-1A-216. TAXES. Unless the power of
20 attorney otherwise provides, language in a power of attorney
21 granting general authority with respect to taxes authorizes
22 the agent to:

23 (1) prepare, sign, and file federal, state, local,
24 and foreign income, gift, payroll, property, Federal Insurance
25 Contributions Act, and other tax returns, claims for refunds,

1 requests for extension of time, petitions regarding tax
2 matters, and any other tax-related documents, including
3 receipts, offers, waivers, consents, including consents and
4 agreements under Internal Revenue Code Section 2032A, 26
5 U.S.C. Section 2032A, as amended, closing agreements, and any
6 power of attorney required by the Internal Revenue Service or
7 other taxing authority with respect to a tax year upon which
8 the statute of limitations has not run and the following 25
9 tax years;

10 (2) pay taxes due, collect refunds, post bonds,
11 receive confidential information, and contest deficiencies
12 determined by the Internal Revenue Service or other taxing
13 authority;

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

16 (4) act for the principal in all tax matters for all
17 periods before the Internal Revenue Service, or other taxing
18 authority.

19 SECTION 26-1A-217. GIFTS.

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

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

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

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

21 (c) An agent may make a gift of the principal's
22 property only as the agent determines is consistent with the
23 principal's objectives if actually known by the agent and, if
24 unknown, as the agent determines is consistent with the

1 principal's best interest based on all relevant factors,
2 including:

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

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

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

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

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

13 ARTICLE 3. FORMS

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

18 ALABAMA POWER OF ATTORNEY FORM

19 IMPORTANT INFORMATION

20 This power of attorney authorizes another person
21 (your agent) to make decisions concerning your property for
22 you (the principal). Your agent will be able to make decisions
23 and act with respect to your property (including your money)
24 whether or not you are able to act for yourself. The meaning
25 of authority over subjects listed on this form is explained in

1 the Alabama Uniform Power of Attorney Act, Chapter 1A, Title
2 26, Code of Alabama 1975.

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

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

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

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

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

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

23 If you have questions about the power of attorney or
24 the authority you are granting to your agent, you should seek
25 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:

1 _____
2 (Signature of Principal)

3 OR

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

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

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

10 _____Stocks and Bonds as defined in Section
11 26-1A-206

12 _____Commodities and Options as defined in Section
13 26-1A-207

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

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

18 _____Insurance and Annuities as defined in Section
19 26-1A-210

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

22 _____Claims and Litigation as defined in Section
23 26-1A-212

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

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

3 _____Retirement Plans as defined in Section
4 26-1A-215

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

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

7 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

8 My agent MAY NOT do any of the following specific
9 acts for me UNLESS I have INITIALED the specific authority
10 listed below:

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

16 _____Create, amend, revoke, or terminate an inter
17 vivos trust, by trust or applicable law

18 _____Make a gift to which exceeds the monetary
19 limitations of Section 26-1A-217 of the Alabama Uniform Power
20 of Attorney Act, but subject to any special instructions in
21 this power of attorney

22 _____Create or change rights of survivorship

23 _____Create or change a beneficiary designation

24 _____Authorize another person to exercise the
25 authority granted under this power of attorney

1 _____Waive the principal's right to be a beneficiary
2 of a joint and survivor annuity, including a survivor benefit
3 under a retirement plan

4 _____Exercise fiduciary powers that the principal
5 has authority to delegate

6 LIMITATIONS ON AGENT'S AUTHORITY

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

11 Limitation of Power. Except for any special
12 instructions given herein to the agent to make gifts, the
13 following shall apply:

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

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

24 SPECIAL INSTRUCTIONS (OPTIONAL)

1 You may give special instructions on the following
2 lines. For your protection, if there are no special
3 instructions write NONE in this section.

4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____

11 EFFECTIVE DATE

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

14 NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

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

18 Name of Nominee for [conservator or guardian] of my
19 estate: _____

20 Nominee's Address: _____

21 Nominee's Telephone Number: _____

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

23 _____

24 Nominee's Address: _____

25 Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

(Signature of Principal)

Your Signature Date: _____

Your Name Printed: _____

Your Address: _____

Your Telephone Number: _____

State of _____

[County] of _____

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

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

Signature of Notary

My commission expires: _____

[This document prepared by: _____]

1 IMPORTANT INFORMATION FOR AGENT

2 Agent's Duties

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

8 (1) do what you know the principal reasonably
9 expects you to do with the principal's property or, if you do
10 not know the principal's expectations, act in the principal's
11 best interest;

12 (2) act in good faith;

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

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

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

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

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

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

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

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

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

8 (6) attempt to preserve the principal's estate plan
9 if you know the plan and preserving the plan is consistent
10 with the principal's best interest.

11 Termination of Agent's Authority

12 You must stop acting on behalf of the principal if
13 you learn of any event that terminates this power of attorney
14 or your authority under this power of attorney. Events that
15 terminate a power of attorney or your authority to act under a
16 power of attorney include:

17 (1) death of the principal;

18 (2) the principal's revocation of the power of
19 attorney or your authority;

20 (3) the occurrence of a termination event stated in
21 the power of attorney;

22 (4) the purpose of the power of attorney is fully
23 accomplished; or

24 (5) if you are married to the principal, a legal
25 action is filed with a court to end your marriage, or for your

1 legal separation, unless the Special Instructions in this
2 power of attorney state that such an action will not terminate
3 your authority.

4 Liability of Agent

5 The meaning of the authority granted to you is
6 defined in the Alabama Uniform Power of Attorney Act, Chapter
7 1A, Title 26, Code of Alabama 1975. If you violate the Alabama
8 Uniform Power of Attorney Act, Chapter 1A, Title 26, Code of
9 Alabama 1975, or act outside the authority granted, you may be
10 liable for any damages caused by your violation.

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

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

17 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
18 ATTORNEY AND AGENT'S AUTHORITY

19 State of _____

20 [County] of _____

21 I, _____ (Name

22 of Agent), [certify] under penalty of perjury that

23 _____

24 (Name of Principal)

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

3 I further [certify] that to my knowledge:

4 (1) the Principal is alive and has not revoked the
5 Power of Attorney or my authority to act under the Power of
6 Attorney and the Power of Attorney and my authority to act
7 under the Power of Attorney have not terminated;

8 (2) if the Power of Attorney was drafted to become
9 effective upon the happening of an event or contingency, the
10 event or contingency has occurred;

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

13 (4) _____
14 _____
15 _____
16 _____

17 (Insert other relevant statements)

18 SIGNATURE AND ACKNOWLEDGMENT

19 _____

20 Agent's Signature Date:

21 _____

22 Agent's Name Printed:

23 _____

24 Agent's Address:

25 _____

1 Agent's Telephone Number:

2 _____

3 This document was acknowledged before me on

4 _____,

5 (Date)

6 by _____.

7 (Name of Agent)

8 _____ (Seal,

9 if any)

10 Signature of Notary

11 My commission expires: _____

12 [This document prepared by:

13 _____]

14 ARTICLE 4. MISCELLANEOUS PROVISIONS

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

20 SECTION 26-1A-402. RELATION TO ELECTRONIC SIGNATURES
21 IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies,
22 limits, and supersedes the federal Electronic Signatures in
23 Global and National Commerce Act, 15 U.S.C. Section 7001 et
24 seq., but does not modify, limit, or supersede Section 101(c)
25 of that act, 15 U.S.C. Section 7001(c), or authorize

1 electronic delivery of any of the notices described in Section
2 103(b) of that act, 15 U.S.C. Section 7003(b).

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

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

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

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

21 (c) (1) A principal may designate under a durable
22 power of attorney an individual who shall be empowered to make
23 health care decisions on behalf of the principal, in the
24 manner set forth in the Natural Death Act, if in the opinion
25 of the principal's attending physician the principal is no

1 longer able to give directions to health care providers.
2 Subject to the express limitation on the authority of the
3 attorney in fact contained in the durable power of attorney,
4 the attorney in fact may make any health care decision on
5 behalf of the principal that the principal could make but for
6 the lack of capacity of the principal to make a decision, but
7 not including psychosurgery, sterilization, abortion when not
8 necessary to preserve the life of the principal, or
9 involuntary hospitalization or treatment covered by Subtitle 2
10 of Title 22. A durable power of attorney executed pursuant to
11 this section may be revoked by written revocation signed and
12 dated by the principal or person acting at the direction of
13 the principal, or being obliterated, burnt, torn, or otherwise
14 destroyed or defaced in a manner indicating intention to
15 cancel or by a verbal expression of intent to revoke made in
16 the presence of a witness 19 years of age or older who signs
17 and dates a writing confirming an expression to revoke.

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

1 health care provider of the principal make decisions under the
2 durable power of attorney. For purposes of this subsection, a
3 health care provider is defined as any person or entity who is
4 licensed, certified, registered, or otherwise authorized by
5 the laws of this state to administer or provide health care in
6 the ordinary course of business or in the practice of a
7 profession.

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

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

1 (8) Any individual acting as an attorney in fact
2 under a duly executed durable power of attorney, which
3 includes provisions which comply with subdivision (2)
4 regarding health care decisions who authorizes the providing,
5 withholding, or withdrawing of life-sustaining treatments or
6 artificially provided nutrition or hydration in accordance
7 with the durable power of attorney and pursuant to this
8 subsection shall not be subject to criminal prosecution or
9 civil liability for that action.

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

19 (10) No physician or other health care provider, and
20 no health care service plan, health maintenance organization,
21 insurer issuing disability or life or health insurance,
22 self-insured employee welfare benefit plan, nonprofit medical
23 service corporation, or mutual nonprofit hospital or hospital
24 service corporation shall require any person to execute a
25 durable power of attorney with respect to health care

1 decisions as a condition for being insured for, or receiving,
2 health care services.

3 (11) Nothing in this subsection regarding the
4 appointment of an attorney in fact with respect to health care
5 decisions shall impair or supersede the jurisdiction of the
6 circuit court in the county where a patient is undergoing
7 treatment to determine whether life-sustaining treatment or
8 artificially provided nutrition and hydration shall be
9 withheld or withdrawn in circumstances not governed by this
10 subsection.

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

23 (13) A durable power of attorney executed in another
24 state in compliance with the law of that state or of this
25 state is valid for purposes of this subsection, but this

1 subsection does not authorize the administration, withholding,
2 or withdrawal of health care otherwise prohibited by the laws
3 of this state.

4 (14) Any durable power of attorney regarding health
5 care decisions made prior to January 1, 2012, shall be given
6 effect provided that the durable power of attorney was legally
7 effective when written and artificially provided nutrition and
8 hydration shall not be withdrawn pursuant to the durable power
9 of attorney unless specifically authorized herein.

10 Section 2. Section 26-1-2 of the Code of Alabama
11 1975, is amended to read as follows:

12 "§26-1-2.

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

24 "(b) All acts done by an attorney in fact pursuant
25 to a durable power of attorney during any period of

1 disability, incompetency, or incapacity of the principal have
2 the same effect and inure to the benefit of and bind the
3 principal and his or her successors in interest as if the
4 principal was competent, not disabled, and not incapacitated.

5 "(c) (1) If, following execution of a durable power
6 of attorney, a court of the domicile of the principal appoints
7 a guardian, curator, or other fiduciary charged with the
8 management of all the property of the principal or all of his
9 or her property except specified exclusions, the attorney in
10 fact is accountable to the fiduciary as well as to the
11 principal. The fiduciary has the same power to revoke or amend
12 the power of attorney that the principal would have had if he
13 or she was not disabled, incompetent, or incapacitated.

14 "(2) A principal may nominate, by a durable power of
15 attorney, the guardian, curator, or other fiduciary for
16 consideration by the court if proceedings to appoint a
17 fiduciary for the principal are thereafter commenced. The
18 court shall make its appointment in accordance with the most
19 recent nomination of the principal in a durable power of
20 attorney except for good cause or disqualification.

21 "(d) (1) The death of a principal who has executed a
22 written power of attorney, durable or otherwise, does not
23 revoke or terminate the agency as to the attorney in fact or
24 other person who, without actual knowledge of the death of the
25 principal, acts in good faith under the power. Any action so

1 taken, unless otherwise invalid or unenforceable, binds the
2 successors in interest of the principal.

3 "(2) The disability, incompetency, or incapacity of
4 a principal who has previously executed a written power of
5 attorney that is not a durable power does not revoke or
6 terminate the agency as to the attorney in fact or other
7 person who, without actual knowledge of the disability,
8 incompetency, or incapacity of the principal, acts in good
9 faith under the power. Any action so taken, unless otherwise
10 invalid or unenforceable, binds the principal and his or her
11 successors in interest.

12 "(e) As to acts undertaken in good faith reliance
13 thereon, an affidavit executed by the attorney in fact under a
14 power of attorney, durable or otherwise, stating that he or
15 she did not have, at the time of the exercise of the power,
16 actual knowledge of the termination of the power by revocation
17 or of the death, disability, incompetency, or incapacity of
18 the principal is conclusive proof of the nonrevocation or
19 nontermination of the power at that time. If the exercise of
20 the power of attorney requires execution and delivery of any
21 instrument that is recordable, the affidavit, when
22 authenticated for record, is likewise recordable.

23 "(f) This section shall not affect any provision in
24 a power of attorney for its termination by expiration of time

1 or occurrence of an event other than express revocation or a
2 change in the principal's capacity.

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

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

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

24 "(4) Subject to any limitation in the durable power
25 of attorney, an attorney in fact may, for the purpose of

1 making a health care decision, request, review, and receive
2 any information, oral or written, regarding the principal's
3 physical or mental health, including medical and hospital
4 records, execute a release or other document required to
5 obtain the information, and consent to the disclosure of the
6 information.

7 "(5) Under no circumstances shall the health care
8 provider of the principal or a nonrelative employee of the
9 health care provider of the principal make decisions under the
10 durable power of attorney. For purposes of this subsection, a
11 health care provider is defined as any person or entity who is
12 licensed, certified, registered, or otherwise authorized by
13 the laws of this state to administer or provide health care in
14 the ordinary course of business or in the practice of a
15 profession.

16 "(6) No health care provider or any employee or
17 agent thereof who in good faith and pursuant to reasonable
18 medical standards follows the direction of a duly authorized
19 attorney in fact shall, as a result thereof, be subject to
20 criminal or civil liability, or be found to have committed an
21 act of unprofessional conduct for an action taken thereunder.
22 Any health care cost or liability for the cost associated with
23 any decision made pursuant to this section shall be the same
24 as if the health care were provided as a result of the
25 principal's decision relating to his or her own care.

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

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

18 "(9) Nothing in this subsection regarding the
19 appointment of an attorney in fact with respect to health care
20 decisions shall impair or supersede any legal right or legal
21 responsibility which any person may have, under case law,
22 common law, or statutory law to effect the provision,
23 withholding, or withdrawal of life-sustaining treatment or
24 artificially provided nutrition and hydration in any lawful

1 manner. In such respect, the provisions of this subsection are
2 cumulative.

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

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

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

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

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

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB53
Senate 24-MAR-11
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 09-JUN-11

By: Senator Orr