

**Senate Bill No. 449**

(By Senators Klempa, Tucker, Chafin, Palumbo, Wells, Nohe,  
Sypolt, Kessler (Mr. President), Jenkins and Williams)

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[Introduced January 30, 2012; referred to the Committee on  
Interstate Cooperation; and then to the Committee on the  
Judiciary.]

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A BILL to repeal §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5,  
§39-4-6 and §39-4-7 of the Code of West Virginia, 1931, as  
amended; to amend said code by adding thereto a new article,  
designated §39-4-401, §39-4-402, §39-4-403, §39-4-404,  
§39-4-405, §39-4-406, §39-4-407, §39-4-408, §39-4-409,  
§39-4-410, §39-4-411, §39-4-412, §39-4-413, §39-4-414,  
§39-4-415, §39-4-416, §39-4-417, §39-4-418, §39-4-419,  
§39-4-420, §39-4-421, §39-4-422 and §39-4-423; to amend said  
code by adding thereto a new article, designated §39-5-501,  
§39-5-502, §39-5-503, §39-5-504, §39-5-505, §39-5-506,  
§39-5-507, §39-5-508, §39-5-509, §39-5-510, §39-5-511,  
§39-5-512, §39-5-513, §39-5-514, §39-5-515, §39-5-516 and  
§39-5-517; to amend said code by adding thereto a new article,

1 designated §39-6-601 and §39-6-602; to amend said code by  
2 adding thereto a new article, designated §39-7-701, §39-7-702  
3 and §39-7-703; and to amend and reenact §44A-3-3 of said code,  
4 all relating to creating the Uniform Power of Attorney Act;  
5 repealing the Uniform Durable Power of Attorney Act; providing  
6 a short title; providing definitions; setting forth the  
7 applicability of the act; providing that the power of attorney  
8 is durable; providing for execution, validity and meaning and  
9 effect of power of attorney; nominating conservator or  
10 guardian and relation of agent to court-appointed fiduciary;  
11 providing when power of attorney effective; terminating power  
12 of attorney or agent's authority; providing for coagents and  
13 successor agents and their liability; reimbursing and  
14 compensating agent and exception; providing for agent's  
15 acceptance of appointment and agent's duties; exonerating  
16 agent in power of attorney and exceptions; providing certain  
17 persons judicial relief to construe a power of attorney or  
18 review an agent's conduct; providing for agent's liability in  
19 certain monetary amounts; providing for resignation of agent;  
20 accepting and relying upon acknowledged power of attorney and  
21 for what a request may be made before accepting the power of  
22 attorney; providing for liability for refusing to accept an  
23 acknowledged statutory form power of attorney; providing that

1 laws applicable to financial institutions and entities  
2 supercede this act; granting specific and general authority  
3 under the power of attorney; providing for granting general  
4 authority of the agent under a power of attorney which  
5 incorporates by reference a subject matter involving real  
6 property, tangible personal property, stocks and bonds,  
7 commodities and options, financial institutions, operation of  
8 an entity or business, insurance and annuities, estates,  
9 trusts and other beneficial interests, claims and litigation,  
10 personal and family maintenance, benefits from governmental  
11 programs or civil or military service, retirement plans, taxes  
12 and gifts; providing a statutory form power of attorney form;  
13 providing miscellaneous provisions relating to uniformity of  
14 application and construction and relating to electronic  
15 signatures in the Global and National Commerce Act; providing  
16 application of act on existing powers of attorney; and  
17 removing provision in the West Virginia Guardianship and  
18 Conservatorship Act that a conservator may not revoke or amend  
19 a durable power of attorney without approval of the court.

20 Be it enacted by the Legislature of West Virginia:

21 That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and  
22 §39-4-7 of the Code of West Virginia, 1931, as amended, be  
23 repealed; that said code be amended by adding thereto a new

1 article, designated §39-4-401, §39-4-402, §39-4-403, §39-4-404,  
2 §39-4-405, §39-4-406, §39-4-407, §39-4-408, §39-4-409, §39-4-410,  
3 §39-4-411, §39-4-412, §39-4-413, §39-4-414, §39-4-415, §39-4-416,  
4 §39-4-417, §39-4-418, §39-4-419, §39-4-420, §39-4-421, §39-4-422  
5 and §39-4-423; that said code be amended by adding thereto a new  
6 article, designated §39-5-501, §39-5-502, §39-5-503, §39-5-504,  
7 §39-5-505, §39-5-506, §39-5-507, §39-5-508, §39-5-509, §39-5-510,  
8 §39-5-511, §39-5-512, §39-5-513, §39-5-514, §39-5-515, §39-5-516  
9 and §39-5-517; that said code be amended by adding thereto a new  
10 article, designated §39-6-601 and §39-6-602; that said code be  
11 amended by adding thereto a new article, designated §39-7-701,  
12 §39-7-702 and §39-7-703; and that §44A-3-3 of said code be amended  
13 and reenacted, all to read as follows:

14 **ARTICLE 4. UNIFORM POWER OF ATTORNEY ACT.**

15 **§39-4-401. Short title.**

16 This article may be cited as the Uniform Power of Attorney  
17 Act.

18 **§39-4-402. Definitions.**

19 In this article:

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

1 authority is delegated.

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

4 (3) "Electronic" means relating to technology having  
5 electrical, digital, magnetic, wireless, optical, electromagnetic  
6 or similar capabilities.

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

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

10 (A) Has an impairment in the ability to receive and evaluate  
11 information or make or communicate decisions even with the use of  
12 technological assistance; or

13 (B) Is:

14 (i) Detained, including incarcerated in a penal system; or

15 (ii) Outside the United States and unable to return.

16 (6) "Person" means an individual, corporation, business trust,  
17 estate, trust, partnership, limited liability company, association,  
18 joint venture, public corporation, government or governmental  
19 subdivision, agency, or instrumentality or any other legal or  
20 commercial entity.

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

1           (8) "Presently exercisable general power of appointment," with  
2 respect to property or a property interest subject to a power of  
3 appointment, means power exercisable at the time in question to  
4 vest absolute ownership in the principal individually, the  
5 principal's estate, the principal's creditors or the creditors of  
6 the principal's estate. The term includes a power of appointment  
7 not exercisable until the occurrence of a specified event, the  
8 satisfaction of an ascertainable standard, or the passage of a  
9 specified period only after the occurrence of the specified event,  
10 the satisfaction of the ascertainable standard or the passage of  
11 the specified period. The term does not include a power  
12 exercisable in a fiduciary capacity or only by will.

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

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

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

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

23           (A) To execute or adopt a tangible symbol; or

1 (B) To attach to or logically associate with the record an  
2 electronic sound, symbol or process.

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

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

12 **§39-4-403. Applicability.**

13 This article applies to all powers of attorney except:

14 (1) A power to the extent it is coupled with an interest in  
15 the subject of the power, including a power given to or for the  
16 benefit of a creditor in connection with a credit transaction;

17 (2) A power to make health-care decisions;

18 (3) A proxy or other delegation to exercise voting rights or  
19 management rights with respect to an entity; and

20 (4) A power created on a form prescribed by a government or  
21 governmental subdivision, agency, or instrumentality for a  
22 governmental purpose.

23 **§39-4-404. Power of attorney is durable.**

1 A power of attorney created under this article is durable  
2 unless it expressly provides that it is terminated by the  
3 incapacity of the principal.

4 **§39-4-405. Execution of power of attorney.**

5 A power of attorney must be signed by the principal or in the  
6 principal's conscious presence by another individual directed by  
7 the principal to sign the principal's name on the power of  
8 attorney. A signature on a power of attorney is presumed to be  
9 genuine if the principal acknowledges the signature before a notary  
10 public or other individual authorized by law to take  
11 acknowledgments.

12 **§39-4-406. Validity of power of attorney.**

13 (a) A power of attorney executed in this state on or after  
14 July 1, 2012, is valid if its execution complies with section FOUR  
15 hundred five of this article.

16 (b) A power of attorney executed in this state before July 1,  
17 2012, is valid if its execution complied with the law of this state  
18 as it existed at the time of execution.

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

22 (1) The law of the jurisdiction that determines the meaning  
23 and effect of the power of attorney pursuant to section one hundred



1 seven of this article; or

2 (2) The requirements for a military power of attorney pursuant  
3 to 10 U.S.C. 1044b, as amended.

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

7 **§39-4-407. Meaning and effect of power of attorney.**

8 The meaning and effect of a power of attorney is determined by  
9 the law of the jurisdiction indicated in the power of attorney and,  
10 in the absence of an indication of jurisdiction, by the law of the  
11 jurisdiction in which the power of attorney was executed.

12 **§39-4-408. Nomination of conservator or guardian; relation of**  
13 **agent to court-appointed fiduciary.**

14 (a) In a power of attorney, a principal may nominate a  
15 conservator of the principal's estate or guardian of the  
16 principal's person for consideration by the court if protective  
17 proceedings for the principal's estate or person are begun after  
18 the principal executes the power of attorney. In the protective  
19 proceedings the court shall consider the nomination in accordance  
20 with the provisions of section eight, article two, chapter  
21 forty-four-a of this code.

22 (b) If, after a principal executes a power of attorney, a  
23 court appoints a conservator of the principal's estate or other

1 fiduciary charged with the management of some or all of the  
2 principal's property, the agent is accountable to the fiduciary as  
3 well as to the principal. Unless otherwise ordered by the court  
4 making the appointment, the power of attorney and the agent's  
5 authority thereunder terminates upon the appointment.

6 **§39-4-409. When power of attorney effective.**

7 (a) A power of attorney is effective when executed unless the  
8 principal provides in the power of attorney that it becomes  
9 effective at a future date or upon the occurrence of a future event  
10 or contingency.

11 (b) If a power of attorney becomes effective upon the  
12 occurrence of a future event or contingency, the principal, in the  
13 power of attorney, may authorize one or more persons to determine  
14 in a writing or other record that the event or contingency has  
15 occurred.

16 (c) If a power of attorney becomes effective upon the  
17 principal's incapacity and the principal has not authorized a  
18 person to determine whether the principal is incapacitated, or the  
19 person authorized is unable or unwilling to make the determination,  
20 the power of attorney becomes effective upon a determination in a  
21 writing or other record by:

22 (1) A physician or licensed psychologist that the principal is  
23 incapacitated within the meaning of section one hundred two (5) (A)

1 of this article; or

2 (2) An attorney at law, a judge or an appropriate governmental  
3 official that the principal is incapacitated within the meaning of  
4 section four hundred two of this article.

5 (d) A person authorized by the principal in the power of  
6 attorney to determine that the principal is incapacitated may act  
7 as the principal's personal representative pursuant to the Health  
8 Insurance Portability and Accountability Act, Sections 1171 through  
9 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and  
10 applicable regulations, to obtain access to the principal's  
11 health-care information and communicate with the principal's  
12 health-care provider.

13 **§39-4-410. Termination of power of attorney or agent's authority.**

14 (a) A power of attorney terminates when:

15 (1) The principal dies;

16 (2) The principal becomes incapacitated, if the power of  
17 attorney is not durable;

18 (3) The principal revokes the power of attorney;

19 (4) The power of attorney provides that it terminates;

20 (5) The purpose of the power of attorney is accomplished; or

21 (6) The principal revokes the agent's authority or the agent  
22 dies, becomes incapacitated, or resigns, and the power of attorney  
23 does not provide for another agent to act under the power of

1 attorney.

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

3 (1) The principal revokes the authority;

4 (2) The agent dies, becomes incapacitated, or resigns;

5 (3) An action is filed for the dissolution or annulment of the  
6 agent's marriage to the principal or their legal separation, unless  
7 the power of attorney otherwise provides; or

8 (4) The power of attorney terminates.

9 (c) Unless the power of attorney otherwise provides, an  
10 agent's authority is exercisable until the authority terminates  
11 pursuant to this section, notwithstanding a lapse of time since the  
12 execution of the power of attorney.

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

19 (e) Incapacity of the principal of a power of attorney that is  
20 not durable does not revoke or terminate the power of attorney as  
21 to an agent or other person who, without actual knowledge of the  
22 incapacity, acts in good faith under the power of attorney. An act  
23 so performed, unless otherwise invalid or unenforceable, binds the

1 principal and the principal's successors in interest.

2 (f) The execution of a power of attorney does not revoke a  
3 power of attorney previously executed by the principal unless the  
4 subsequent power of attorney provides that the previous power of  
5 attorney is revoked or that all other powers of attorney are  
6 revoked.

7 **§39-4-411. Coagents and successor agents.**

8 (a) A principal may designate two or more persons to act as  
9 coagents. Unless the power of attorney otherwise provides, each  
10 coagent may exercise his or her authority independently and the  
11 consent of all coagents is not necessary for the validity of an act  
12 or transaction.

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

19 (1) Has the same authority as that granted to the original  
20 agent; and

21 (2) May not act until all predecessor agents have resigned,  
22 died, become incapacitated, are no longer qualified to serve, or  
23 have declined to serve.

1 (c) Except as otherwise provided in the power of attorney and  
2 this article, an agent who does not participate in or conceal a  
3 breach of fiduciary duty committed by another agent, including a  
4 predecessor agent, is not liable for the actions of the other  
5 agent.

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

14 **§39-4-412. Reimbursement and compensation of agent.**

15 Unless the power of attorney otherwise provides, an agent is  
16 entitled to reimbursement of expenses reasonably incurred on behalf  
17 of the principal and to compensation that is reasonable under the  
18 circumstances: *Provided*, That an agent who is related to the  
19 principal as an ancestor, spouse or descendent is not entitled to  
20 compensation for services as agent, unless the power of attorney  
21 specifically provides for compensation.

22 **§39-4-413. Agent's acceptance.**

23 Except as otherwise provided in the power of attorney, a

1 person accepts appointment as an agent under a power of attorney by  
2 exercising authority or performing duties as an agent or by any  
3 other assertion or conduct indicating acceptance.

4 **§39-4-414. Agent's duties.**

5 (a) Notwithstanding provisions in the power of attorney, an  
6 agent who has accepted appointment shall:

7 (1) Act in accordance with the principal's reasonable  
8 expectations to the extent actually known by the agent and,  
9 otherwise, in the principal's best interest;

10 (2) Act in good faith; and

11 (3) Act only within the scope of authority granted in the  
12 power of attorney.

13 (b) Except as otherwise provided in the power of attorney, an  
14 agent who has accepted appointment shall:

15 (1) Act loyally for the principal's benefit;

16 (2) Act so as not to create a conflict of interest that  
17 impairs the agent's ability to act impartially in the principal's  
18 best interest;

19 (3) Act with the care, competence, and diligence ordinarily  
20 exercised by agents in similar circumstances;

21 (4) Keep a record of all receipts, disbursements and  
22 transactions made on behalf of the principal;

23 (5) Cooperate with a person that has authority to make

1 health-care decisions for the principal to carry out the  
2 principal's reasonable expectations to the extent actually known by  
3 the agent and, otherwise, act in the principal's best interest; and

4 (6) Attempt to preserve the principal's estate plan, to the  
5 extent actually known by the agent, if preserving the plan is  
6 consistent with the principal's best interest based on all relevant  
7 factors, including:

8 (A) The value and nature of the principal's property;

9 (B) The principal's foreseeable obligations and need for  
10 maintenance;

11 (C) Minimization of taxes, including income, estate,  
12 inheritance, generation-skipping transfer and gift taxes; and

13 (D) Eligibility for a benefit, a program or assistance under  
14 a statute or regulation.

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

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

23 (e) If an agent is selected by the principal because of



1 special skills or expertise possessed by the agent or in reliance  
2 on the agent's representation that the agent has special skills or  
3 expertise, the special skills or expertise must be considered in  
4 determining whether the agent has acted with care, competence and  
5 diligence under the circumstances.

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

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

14 (h) Except as otherwise provided in the power of attorney, an  
15 agent is not required to disclose receipts, disbursements or  
16 transactions conducted on behalf of the principal or provide an  
17 accounting unless (1) ordered by a court or (2) requested by the  
18 principal, a guardian, a conservator, another fiduciary acting for  
19 the principal, a governmental agency having authority to protect  
20 the welfare of the principal or, upon the death of the principal,  
21 by the personal representative or successor in interest of the  
22 principal's estate. If so requested, within thirty days the agent  
23 shall comply with the request or provide a writing or other record

1 substantiating why additional time is needed and shall comply with  
2 the request within an additional thirty days. If an agent fails or  
3 refuses to comply with the provisions of this section, the court  
4 may award the principal or other authorized party requesting the  
5 disclosure reimbursement of reasonable attorneys fees and costs  
6 incurred.

7 **§39-4-415. Exoneration of agent.**

8 A provision in a power of attorney relieving an agent of  
9 liability for breach of duty is binding on the principal and the  
10 principal's successors in interest except to the extent the  
11 provision:

12 (1) Relieves the agent of liability for breach of duty  
13 committed dishonestly, with an improper motive or with reckless  
14 indifference to the purposes of the power of attorney or the best  
15 interest of the principal; or

16 (2) Was inserted as a result of an abuse of a confidential or  
17 fiduciary relationship with the principal.

18 **§39-4-416. Judicial relief.**

19 (a) The following persons may petition a court to construe a  
20 power of attorney or review the agent's conduct, and grant  
21 appropriate relief:

22 (1) The principal or the agent;

23 (2) A guardian, conservator or other fiduciary acting for the

1 principal;

2 (3) A person authorized to make health-care decisions for the  
3 principal;

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

5 (5) An individual who would qualify as a presumptive heir of  
6 the principal;

7 (6) A person named as a beneficiary to receive any property,  
8 benefit or contractual right on the principal's death or as a  
9 beneficiary of a trust created by or for the principal that has a  
10 financial interest in the principal's estate;

11 (7) A governmental agency having regulatory authority to  
12 protect the welfare of the principal;

13 (8) The principal's caregiver or another person that  
14 demonstrates sufficient interest in the principal's welfare; and

15 (9) A person asked to accept the power of attorney.

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

20 **§39-4-417. Agent's liability.**

21 An agent that violates this article is liable to the principal  
22 or the principal's successors in interest for the amount required  
23 to:

1 (1) Restore the value of the principal's property to what it  
2 would have been had the violation not occurred;

3 (2) Reimburse the principal or the principal's successors in  
4 interest for the attorney's fees and costs paid on the agent's  
5 behalf out of the principal's assets;

6 (3) Reimburse the reasonable attorneys fees and costs incurred  
7 by the principal or the principal's successors in interest in  
8 pursuing rectification of the violation by the agent; and

9 (4) Pay such other amounts, damages, costs or expenses as the  
10 court may award.

11 **§39-4-418. Agent's resignation; notice.**

12 Unless the power of attorney provides a different method for  
13 an agent's resignation, an agent may resign by giving notice to the  
14 principal and, if the principal is incapacitated:

15 (1) To the conservator or guardian, if one has been appointed  
16 for the principal, and a coagent or successor agent; or

17 (2) If there is no person described in paragraph (1), to:

18 (A) The principal's caregiver;

19 (B) Another person reasonably believed by the agent to have  
20 sufficient interest in the principal's welfare; or

21 (C) A governmental agency having authority to protect the  
22 welfare of the principal.

23 **§39-4-419. Acceptance of and reliance upon acknowledged power of**

1                   **attorney.**

2           (a) For purposes of this section and section four hundred five  
3 of this article, "acknowledged" means purportedly verified before  
4 a notary public or other individual authorized to take  
5 acknowledgments.

6           (b) A person who in good faith accepts an acknowledged power  
7 of attorney without actual knowledge that the signature is not  
8 genuine may rely upon the presumption under the provisions of  
9 section four hundred five of this article that the signature is  
10 genuine.

11          (c) A person who in good faith accepts an acknowledged power  
12 of attorney without actual knowledge that the power of attorney is  
13 void, invalid or terminated, that the purported agent's authority  
14 is void, invalid or terminated, or that the agent is exceeding or  
15 improperly exercising the agent's authority may rely upon the power  
16 of attorney as if the power of attorney were genuine, valid and  
17 still in effect, the agent's authority were genuine, valid and  
18 still in effect, and the agent had not exceeded and had properly  
19 exercised the authority except as to a conveyance of interests in  
20 real property where the principal has previously filed a notice of  
21 termination of the power of attorney in the office of the clerk of  
22 the county commission in the county in which the property is  
23 located.

1 (d) A person who is asked to accept an acknowledged power of  
2 attorney may request, and rely upon, without further investigation:

3 (1) An agent's certification under penalty of perjury of any  
4 factual matter concerning the principal, agent or power of  
5 attorney;

6 (2) An English translation of the power of attorney if the  
7 power of attorney contains, in whole or in part, language other  
8 than English; and

9 (3) An opinion of counsel as to any matter of law concerning  
10 the power of attorney if the person making the request provides in  
11 a writing or other record the reason for the request.

12 (e) An English translation or an opinion of counsel requested  
13 under this section must be provided at the principal's expense  
14 unless the request is made more than seven business days after the  
15 power of attorney is presented for acceptance.

16 (f) For purposes of this section and article, a person who  
17 conducts activities through employees is without actual knowledge  
18 of a fact relating to a power of attorney, a principal or an agent  
19 if the employee conducting the transaction involving the power of  
20 attorney is without actual knowledge of the fact.

21 **§39-4-420. Liability for refusal to accept acknowledged statutory**  
22 **form power of attorney.**

23 (a) In this section, "statutory form power of attorney" means

1 a power of attorney substantially in the form provided in this  
2 article or that meets the requirements for a military power of  
3 attorney pursuant to 10 U.S.C. 1044b, as amended.

4 (b) Except as otherwise provided in this section:

5 (1) A person shall either accept an acknowledged statutory  
6 form power of attorney or request a certification, a translation or  
7 an opinion of counsel under section four hundred nineteen (d) of  
8 this article no later than seven business days after presentation  
9 of the power of attorney for acceptance;

10 (2) If a person requests a certification, a translation, or an  
11 opinion of counsel under section four hundred nineteen (d) of this  
12 article, the person shall accept the statutory form power of  
13 attorney no later than five business days after receipt of the  
14 certification, translation, or opinion of counsel; and

15 (3) A person may not require an additional or different form  
16 of power of attorney for authority granted in the statutory form  
17 power of attorney presented.

18 (c) A person is not required to accept an acknowledged  
19 statutory form power of attorney if:

20 (1) The person is not otherwise required to engage in a  
21 transaction with the principal in the same circumstances;

22 (2) Engaging in a transaction with the agent or the principal  
23 in the same circumstances would be inconsistent with federal law;

1           (3) The person has actual knowledge of the termination of the  
2 agent's authority or of the power of attorney before exercise of  
3 the power;

4           (4) A request for a certification, a translation, or an  
5 opinion of counsel under section four hundred nineteen (d) of this  
6 article is not timely provided;

7           (5) The person in good faith believes that the power is not  
8 valid or that the agent does not have the authority to perform the  
9 act requested, whether or not a certification, a translation or an  
10 opinion of counsel under section four hundred nineteen (d) of this  
11 article has been requested or provided; or

12           (6) The person makes, or has actual knowledge that another  
13 person has made, a report to the local adult protective services  
14 agency stating a good faith belief that the principal may be  
15 subject to physical or financial abuse, neglect, exploitation or  
16 abandonment by the agent or a person acting for or with the agent.

17           (d) A person who refuses in violation of this section to  
18 accept an acknowledged statutory form power of attorney is subject  
19 to a court order mandating acceptance of the power of attorney.  
20 The court may award to the principal or the principal's agent  
21 reasonable attorney's fees and costs incurred in any action or  
22 proceeding that confirms the validity of the power of attorney or  
23 mandates acceptance of the power of attorney.



1 **§39-4-421. Principles of law and equity.**

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

4 **§39-4-422. Laws applicable to financial institutions and entities.**

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

8 **§39-4-423. Remedies under other law.**

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

12 **ARTICLE 5. AUTHORITY.**

13 **§39-5-501. Authority that requires specific grant; grant of**  
14 **general authority.**

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

- 21 (1) Create, amend, revoke or terminate an inter vivos trust;  
22 (2) Make a gift;

1 (3) Create or change rights of survivorship;

2 (4) Create or change a beneficiary designation;

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

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

7 (7) Exercise fiduciary powers that the principal has authority  
8 to delegate; or

9 (8) Disclaim property, including a power of appointment.

10 (b) Notwithstanding a grant of authority to do an act  
11 described in this section, unless the power of attorney otherwise  
12 provides, an agent that is not an ancestor, spouse or descendant of  
13 the principal may not exercise authority under a power of attorney  
14 to create in the agent, or in an individual to whom the agent owes  
15 a legal 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) of this  
19 section, if a power of attorney grants to an agent authority to do  
20 all acts that a principal could do, the agent has the general  
21 authority described in this article.

22 (d) Unless the power of attorney otherwise provides, a grant  
23 of authority to make a gift is subject to the provisions of this

1 article.

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

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

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

14 **§39-5-502. Incorporation of authority.**

15 (a) An agent has authority described in this article if the  
16 power of attorney refers to general authority with respect to the  
17 descriptive term for the subjects stated in this article or cites  
18 the section in this article in which the authority is described.

19 (b) A reference in a power of attorney to general authority  
20 with respect to the descriptive term for a subject in this article  
21 or a citation to this section incorporates the entire provisions of  
22 this article as if it were set out in full in the power of  
23 attorney.

1 (c) A principal may modify authority incorporated by  
2 reference.

3 **§39-5-503. Construction of authority generally.**

4 Except as otherwise provided in the power of attorney, by  
5 executing a power of attorney that incorporates by reference a  
6 subject described in sections five hundred four through five  
7 hundred seventeen of this article or that grants to an agent  
8 authority to do all acts that a principal could do pursuant to the  
9 provisions of this article, a principal authorizes the agent, with  
10 respect to that subject, to:

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

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

19 (3) Execute, acknowledge, seal, deliver, file or record any  
20 instrument or communication the agent considers desirable to  
21 accomplish a purpose of a transaction, including creating at any  
22 time a schedule listing some or all of the principal's property and  
23 attaching it to the power of attorney;

1           (4) Initiate, participate in, submit to alternative dispute  
2 resolution, settle, oppose or propose or accept a compromise with  
3 respect to a claim existing in favor of or against the principal or  
4 intervene in litigation relating to the claim;

5           (5) Seek on the principal's behalf the assistance of a court  
6 or other governmental agency to carry out an act authorized in the  
7 power of attorney;

8           (6) Engage, compensate and discharge an attorney, accountant,  
9 discretionary investment manager, expert witness or other advisor;

10          (7) Prepare, execute and file a record, report or other  
11 document to safeguard or promote the principal's interest under a  
12 statute or rule;

13          (8) Communicate with any representative or employee of a  
14 government or governmental subdivision, agency or instrumentality,  
15 on behalf of the principal;

16          (9) Access communications intended for, and communicate on  
17 behalf of the principal, whether by mail, electronic transmission,  
18 telephone or other means; and

19          (10) Do any lawful act with respect to the subject and all  
20 property related to the subject.

21 **§39-5-504. Real property.**

22          (a) Unless the power of attorney otherwise provides, language  
23 in a power of attorney granting general authority with respect to

1 real property authorizes the agent to:

2       (1) Demand, buy, lease, receive, accept as a gift or as  
3 security for an extension of credit, or otherwise acquire or reject  
4 an interest in real property or a right incident to real property;

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

14       (3) Pledge or mortgage an interest in real property or right  
15 incident to real property as security to borrow money or pay, renew  
16 or extend the time of payment of a debt of the principal or a debt  
17 guaranteed by the principal;

18       (4) Release, assign, satisfy or enforce by litigation or  
19 otherwise a mortgage, deed of trust, conditional sale contract,  
20 encumbrance, lien or other claim to real property which exists or  
21 is asserted;

22       (5) Manage or conserve an interest in real property or a right  
23 incident to real property owned or claimed to be owned by the

1 principal, including:

2 (A) Insuring against liability or casualty or other loss;

3 (B) Obtaining or regaining possession of or protecting the  
4 interest or right by litigation or otherwise;

5 (C) Paying, assessing, compromising or contesting taxes or  
6 assessments or applying for and receiving refunds in connection  
7 with them; and

8 (D) Purchasing supplies, hiring assistance or labor and making  
9 repairs or alterations to the real property;

10 (6) Use, develop, alter, replace, remove, erect or install  
11 structures or other improvements upon real property in or incident  
12 to which the principal has, or claims to have, an interest or  
13 right;

14 (7) Participate in a reorganization with respect to real  
15 property or an entity that owns an interest in or right incident to  
16 real property and receive, hold and act with respect to stocks and  
17 bonds or other property received in a plan of reorganization,  
18 including:

19 (A) Selling or otherwise disposing of them;

20 (B) Exercising or selling an option, right of conversion or  
21 similar right with respect to them; and

22 (C) Exercising any voting rights in person or by proxy;

23 (8) Change the form of title of an interest in or right

1 incident to real property; and

2       (9) Dedicate to public use, with or without consideration,  
3 easements or other real property in which the principal has, or  
4 claims to have, an interest.

5       (b) In order to exercise the powers provided in subdivisions  
6 (2), (3), (8) and (9), subsection (a) of this section, or to  
7 release or assign and interest in real property as described in  
8 subdivision (4), subsection (a) of this section, the power of  
9 attorney must first be recorded in the office of the clerk of the  
10 county commission in the county in which the property is located.

11 **§39-5-505. Tangible personal property.**

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

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

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



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

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

9           (5) Manage or conserve tangible personal property or an  
10 interest in tangible personal property on behalf of the principal,  
11 including:

12           (A) Insuring against liability or casualty or other loss;

13           (B) Obtaining or regaining possession of or protecting the  
14 property or interest, by litigation or otherwise;

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

18           (D) Moving the property from place to place;

19           (E) Storing the property for hire or on a gratuitous bailment;

20 and

21           (F) Using and making repairs, alterations or improvements to  
22 the property; and

23           (6) Change the form of title of an interest in tangible

1 personal property.

2 **§39-5-506. Stocks and bonds.**

3 Unless the power of attorney otherwise provides, language in  
4 a power of attorney granting general authority with respect to  
5 stocks and bonds authorizes the agent to:

6 (1) Buy, sell and exchange stocks and bonds;

7 (2) Establish, continue, modify or terminate an account with  
8 respect to stocks and bonds;

9 (3) Pledge stocks and bonds as security to borrow, pay, renew  
10 or extend the time of payment of a debt of the principal;

11 (4) Receive certificates and other evidences of ownership with  
12 respect to stocks and bonds; and

13 (5) Exercise voting rights with respect to stocks and bonds in  
14 person or by proxy, enter into voting trusts and consent to  
15 limitations on the right to vote.

16 **§39-5-507. Commodities and options.**

17 Unless the power of attorney otherwise provides, language in  
18 a power of attorney granting general authority with respect to  
19 commodities and options authorizes the agent to:

20 (1) Buy, sell, exchange, assign, settle and exercise commodity  
21 futures contracts and call or put options on stocks or stock  
22 indexes traded on a regulated option exchange; and

23 (2) Establish, continue, modify and terminate option accounts.

1 **§39-5-508. Banks and other financial institutions.**

2 Unless the power of attorney otherwise provides, language in  
3 a power of attorney granting general authority with respect to  
4 banks and other financial institutions authorizes the agent to:

5 (1) Continue, modify and terminate an account or other banking  
6 arrangement made by or on behalf of the principal;

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

11 (3) Contract for services available from a financial  
12 institution, including renting a safe deposit box or space in a  
13 vault;

14 (4) Withdraw, by check, order, electronic funds transfer or  
15 otherwise, money or property of the principal deposited with or  
16 left in the custody of a financial institution;

17 (5) Receive statements of account, vouchers, notices and  
18 similar documents from a financial institution and act with respect  
19 to them;

20 (6) Enter a safe deposit box or vault and withdraw or add to  
21 the contents;

22 (7) Borrow money and pledge as security personal property of  
23 the principal necessary to borrow money or pay, renew or extend the

1 time of payment of a debt of the principal or a debt guaranteed by  
2 the principal;

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

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

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

16       (11) Consent to an extension of the time of payment with  
17 respect to commercial paper or a financial transaction with a  
18 financial institution.

19 **§39-5-509. Operation of entity or business.**

20       Subject to the terms of a document or an agreement governing  
21 an entity or an entity ownership interest, and unless the power of  
22 attorney otherwise provides, language in a power of attorney  
23 granting general authority with respect to operation of an entity

1 or business authorizes the agent to:

2 (1) Operate, buy, sell, enlarge, reduce or terminate an  
3 ownership interest;

4 (2) Perform a duty or discharge a liability and exercise in  
5 person or by proxy a right, power, privilege or option that the  
6 principal has, may have, or claims to have;

7 (3) Enforce the terms of an ownership agreement;

8 (4) Initiate, participate in, submit to alternative dispute  
9 resolution, settle, oppose or propose or accept a compromise with  
10 respect to litigation to which the principal is a party because of  
11 an ownership interest;

12 (5) Exercise in person or by proxy, or enforce by litigation  
13 or otherwise, a right, power, privilege or option the principal has  
14 or claims to have as the holder of stocks and bonds;

15 (6) Initiate, participate in, submit to alternative dispute  
16 resolution, settle, oppose or propose or accept a compromise with  
17 respect to litigation to which the principal is a party concerning  
18 stocks and bonds;

19 (7) With respect to an entity or business owned solely by the  
20 principal:

21 (A) Continue, modify, renegotiate, extend and terminate a  
22 contract made by or on behalf of the principal with respect to the  
23 entity or business before execution of the power of attorney;

1 (B) Determine:

2 (i) The location of its operation;

3 (ii) The nature and extent of its business;

4 (iii) The methods of manufacturing, selling, merchandising,  
5 financing, accounting and advertising employed in its operation;

6 (iv) The amount and types of insurance carried; and

7 (v) The mode of engaging, compensating and dealing with its  
8 employees and accountants, attorneys or other advisors;

9 (C) Change the name or form of organization under which the  
10 entity or business is operated and enter into an ownership  
11 agreement with other persons to take over all or part of the  
12 operation of the entity or business; and

13 (D) Demand and receive money due or claimed by the principal  
14 or on the principal's behalf in the operation of the entity or  
15 business and control and disburse the money in the operation of the  
16 entity or business;

17 (8) Put additional capital into an entity or business in which  
18 the principal has an interest;

19 (9) Join in a plan of reorganization, consolidation,  
20 conversion, domestication, or merger of the entity or business;

21 (10) Sell or liquidate all or part of an entity or business;

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

1 (12) Prepare, sign, file and deliver reports, compilations of  
2 information, returns or other papers with respect to an entity or  
3 business and make related payments; and

4 (13) Pay, compromise, or contest taxes, assessments, fines or  
5 penalties and perform any other act to protect the principal from  
6 illegal or unnecessary taxation, assessments, fines or penalties,  
7 with respect to an entity or business, including attempts to  
8 recover, in any manner permitted by law, money paid before or after  
9 the execution of the power of attorney.

10 **§39-5-510. Insurance and annuities.**

11 Unless the power of attorney otherwise provides, language in  
12 a power of attorney granting general authority with respect to  
13 insurance and annuities authorizes the agent to:

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

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

23 (3) Pay the premium or make a contribution on, modify,

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

3 (4) Apply for and receive a loan secured by a contract of  
4 insurance or annuity;

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

7 (6) Exercise an election;

8 (7) Exercise investment powers available under a contract of  
9 insurance or annuity;

10 (8) Change the manner of paying premiums on a contract of  
11 insurance or annuity;

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

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

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

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

23 (13) Pay, from proceeds or otherwise, compromise or contest



1 and apply for refunds in connection with, a tax or assessment  
2 levied by a taxing authority with respect to a contract of  
3 insurance or annuity or its proceeds or liability accruing by  
4 reason of the tax or assessment.

5 **§39-5-511. Estates, trusts and other beneficial interests.**

6 (a) In this section, "estate, trust, or other beneficial  
7 interest" means a trust, probate estate, guardianship,  
8 conservatorship, escrow, or custodianship or a fund from which the  
9 principal is, may become, or claims to be, entitled to a share or  
10 payment.

11 (b) Unless the power of attorney otherwise provides, language  
12 in a power of attorney granting general authority with respect to  
13 estates, trusts and other beneficial interests authorizes the agent  
14 to:

15 (1) Accept, receive, receipt for, sell, assign, pledge or  
16 exchange a share in or payment from an estate, trust or other  
17 beneficial interest;

18 (2) Demand or obtain money or another thing of value to which  
19 the principal is, may become, or claims to be, entitled by reason  
20 of an estate, trust or other beneficial interest, by litigation or  
21 otherwise;

22 (3) Exercise for the benefit of the principal a presently  
23 exercisable general power of appointment held by the principal;

1 (4) Initiate, participate in, submit to alternative dispute  
2 resolution, settle, oppose or propose or accept a compromise with  
3 respect to litigation to ascertain the meaning, validity or effect  
4 of a deed, will, declaration of trust or other instrument or  
5 transaction affecting the interest of the principal;

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

10 (6) Conserve, invest, disburse or use anything received for an  
11 authorized purpose;

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

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

20 **§39-5-512. Claims and litigation.**

21 Unless the power of attorney otherwise provides, language in  
22 a power of attorney granting general authority with respect to  
23 claims and litigation authorizes the agent to:

1           (1) Assert and maintain before a court or administrative  
2 agency a claim, claim for relief, cause of action, counterclaim,  
3 offset, recoupment or defense, including an action to recover  
4 property or other thing of value, recover damages sustained by the  
5 principal, eliminate or modify tax liability, or seek an  
6 injunction, specific performance or other relief;

7           (2) Bring an action to determine adverse claims or intervene  
8 or otherwise participate in litigation;

9           (3) Seek an attachment, garnishment, order of arrest or other  
10 preliminary, provisional or intermediate relief and use an  
11 available procedure to effect or satisfy a judgment, order or  
12 decree;

13           (4) Make or accept a tender, offer of judgment or admission of  
14 facts, submit a controversy on an agreed statement of facts,  
15 consent to examination and bind the principal in litigation;

16           (5) Submit to alternative dispute resolution, settle and  
17 propose or accept a compromise;

18           (6) Waive the issuance and service of process upon the  
19 principal, accept service of process, appear for the principal,  
20 designate persons upon which process directed to the principal may  
21 be served, execute and file or deliver stipulations on the  
22 principal's behalf, verify pleadings, seek appellate review,  
23 procure and give surety and indemnity bonds, contract and pay for

1 the preparation and printing of records and briefs, receive,  
2 execute and file or deliver a consent, waiver, release, confession  
3 of judgment, satisfaction of judgment, notice, agreement or other  
4 instrument in connection with the prosecution, settlement or  
5 defense of a claim or litigation;

6 (7) Act for the principal with respect to bankruptcy or  
7 insolvency, whether voluntary or involuntary, concerning the  
8 principal or some other person, or with respect to a  
9 reorganization, receivership or application for the appointment of  
10 a receiver or trustee which affects an interest of the principal in  
11 property or other thing of value;

12 (8) Pay a judgment, award or order against the principal or a  
13 settlement made in connection with a claim or litigation; and

14 (9) Receive money or other thing of value paid in settlement  
15 of or as proceeds of a claim or litigation.

16 **§39-5-513. Personal and family maintenance.**

17 (a) Unless the power of attorney otherwise provides, language  
18 in a power of attorney granting general authority with respect to  
19 personal and family maintenance authorizes the agent to:

20 (1) Perform the acts necessary to maintain the customary  
21 standard of living of the principal, the principal's spouse and the  
22 following individuals, whether living when the power of attorney is  
23 executed or later born:

1 (A) The principal's children;

2 (B) other individuals legally entitled to be supported by the  
3 principal; and

4 (C) The individuals whom the principal has customarily  
5 supported or indicated the intent to support;

6 (2) Make periodic payments of child support and other family  
7 maintenance required by a court or governmental agency or an  
8 agreement to which the principal is a party;

9 (3) Provide living quarters for the individuals described in  
10 paragraph (1) of this section by:

11 (A) Purchase, lease or other contract; or

12 (B) Paying the operating costs, including interest,  
13 amortization payments, repairs, improvements and taxes, for  
14 premises owned by the principal or occupied by those individuals;

15 (4) Provide normal domestic help, usual vacations and travel  
16 expenses, and funds for shelter, clothing, food, appropriate  
17 education, including postsecondary and vocational education and  
18 other current living costs for the individuals described in  
19 subdivision (1) of this section;

20 (5) Pay expenses for necessary health care and custodial care  
21 on behalf of the individuals described in subdivision (1) of this  
22 section;

23 (6) Act as the principal's personal representative pursuant to

1 the Health Insurance Portability and Accountability Act, Sections  
2 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, as  
3 amended, and applicable regulations, in making decisions related to  
4 the past, present or future payment for the provision of health  
5 care consented to by the principal or anyone authorized under the  
6 law of this state to consent to health care on behalf of the  
7 principal;

8       (7) Continue any provision made by the principal for  
9 automobiles or other means of transportation, including  
10 registering, licensing, insuring and replacing them, for the  
11 individuals described in subdivision (1) of this section;

12       (8) Maintain credit and debit accounts for the convenience of  
13 the individuals described in subdivision (1) of this section and  
14 open new accounts; and

15       (9) Continue payments incidental to the membership or  
16 affiliation of the principal in a religious institution, club,  
17 society, order or other organization or to continue contributions  
18 to those organizations.

19       (b) Authority with respect to personal and family maintenance  
20 is neither dependent upon, nor limited by, authority that an agent  
21 may or may not have with respect to gifts under this article.

22 **§39-5-514. Benefits from governmental programs or civil or**  
23 **military service.**

1           (a) In this section, "benefits from governmental programs or  
2 civil or military service" means any benefit, program or assistance  
3 provided under a federal, state or local statute or regulation  
4 including Social Security, Medicare, and Medicaid.

5           (b) Unless the power of attorney otherwise provides, language  
6 in a power of attorney granting general authority with respect to  
7 benefits from governmental programs or civil or military service  
8 authorizes the agent to:

9           (1) Execute vouchers in the name of the principal for  
10 allowances and reimbursements payable by the United States or a  
11 foreign government or by a state or subdivision of a state to the  
12 principal, including allowances and reimbursements for  
13 transportation of the individuals described in this article, and  
14 for shipment of their household effects;

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

21           (3) Enroll in, apply for, select, reject, change, amend or  
22 discontinue, on the principal's behalf, a benefit or program;

23           (4) Prepare, file and maintain a claim of the principal for a

1 benefit or assistance, financial or otherwise, to which the  
2 principal may be entitled under a statute or rule;

3 (5) Initiate, participate in, submit to alternative dispute  
4 resolution, settle, oppose or propose or accept a compromise with  
5 respect to litigation concerning any benefit or assistance the  
6 principal may be entitled to receive under a statute or rule; and

7 (6) Receive the financial proceeds of a claim described in  
8 subdivision(4) of this section and conserve, invest, disburse or  
9 use for a lawful purpose anything so received.

10 **§39-5-515. Retirement plans.**

11 (a) In this section, "retirement plan" means a plan or account  
12 created by an employer, the principal or another individual to  
13 provide retirement benefits or deferred compensation of which the  
14 principal is a participant, beneficiary or owner, including a plan  
15 or account under the following sections of the Internal Revenue  
16 Code:

17 (1) An individual retirement account under Internal Revenue  
18 Code 408, 26 U.S.C. 408, as amended;

19 (2) A Roth individual retirement account under Internal  
20 Revenue Code 408A, 26 U.S.C. 408A, as amended;

21 (3) A deemed individual retirement account under Internal  
22 Revenue Code 408(q), 26 U.S.C. 408(q), as amended;

23 (4) An annuity or mutual fund custodial account under Internal



1 Revenue Code 403(b), 26 U.S.C. 403(b), as amended;

2 (5) A pension, profit-sharing, stock bonus or other retirement  
3 plan qualified under Internal Revenue Code 401(a), 26 U.S.C.  
4 401(a), as amended;

5 (6) A plan under Internal Revenue Code 457(b), 26 U.S.C.  
6 457(b), as amended; and

7 (7) A nonqualified deferred compensation plan under Internal  
8 Revenue Code 409A, 26 U.S.C. 409A, as amended.

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

12 (1) Select the form and timing of payments under a retirement  
13 plan and withdraw benefits from a plan;

14 (2) Make a rollover, including a direct trustee-to-trustee  
15 rollover, of benefits from one retirement plan to another;

16 (3) Establish a retirement plan in the principal's name;

17 (4) Make contributions to a retirement plan;

18 (5) Exercise investment powers available under a retirement  
19 plan; and

20 (6) Borrow from, sell assets to or purchase assets from a  
21 retirement plan.

22 **§39-5-516. Taxes.**

23 Unless the power of attorney otherwise provides, language in

1 a power of attorney granting general authority with respect to  
2 taxes authorizes the agent to:

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

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

16       (3) Exercise any election available to the principal under  
17 federal, state, local or foreign tax law; and

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

20 **§39-5-517. Gifts.**

21       (a) In this section, a gift "for the benefit of" a person  
22 includes a gift to a trust, an account under the Uniform Transfers  
23 to Minors Act and a tuition savings account or prepaid tuition plan

1 as defined under Internal Revenue Code 529, 26 U.S.C. 529, as  
2 amended.

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

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

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

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

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

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

4 (2) The principal's foreseeable obligations and need for  
5 maintenance;

6 (3) Minimization of taxes, including income, estate,  
7 inheritance, generation-skipping transfer and gift taxes;

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

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

12 **ARTICLE 6. STATUTORY FORMS.**

13 **§39-6-601. Statutory form power of attorney.**

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

17 **State of West Virginia**

18 **STATUTORY FORM POWER OF ATTORNEY**

19 **IMPORTANT INFORMATION**

20 This power of attorney authorizes another person (your agent)  
21 to make decisions concerning your property for you (the principal).  
22 Your agent will be able to make decisions and act with respect to

1 your property (including your money) whether or not you are able to  
2 act for yourself. The meaning of authority over subjects listed on  
3 this form is explained in the Uniform Power of Attorney Act [insert  
4 citation].

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

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

11 Your agent is entitled to reasonable compensation unless you  
12 state otherwise in the Special Instructions.

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

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

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

22 **If you have questions about the power of attorney or the**  
23 **authority you are granting to your agent, you should seek legal**

1 **advice before signing this form.**

2 **DESIGNATION OF AGENT**

3 I \_\_\_\_\_ name the following person as my agent:  
4 (Name of Principal)

5 Name of Agent: \_\_\_\_\_

6 Agent's Address: \_\_\_\_\_

7 Agent's Telephone Number: \_\_\_\_\_

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

10 Name of Successor Agent: \_\_\_\_\_

11 Successor Agent's Address: \_\_\_\_\_

12 Successor Agent's Telephone Number: \_\_\_\_\_

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

15 Name of Second Successor Agent: \_\_\_\_\_

16 Second Successor Agent's Address: \_\_\_\_\_

17 Second Successor Agent's Telephone Number: \_\_\_\_\_

18 **GRANT OF GENERAL AUTHORITY**

19 I grant my agent and any successor agent general authority to  
20 act for me with respect to the following subjects as defined in the  
21 Uniform Power of Attorney Act [insert citation]:

22 (INITIAL each subject you want to include in the agent's general  
23 authority. If you wish to grant general authority over all of the

1 subjects you may initial "All Preceding Subjects" instead of  
2 initialing each subject.)

3 (\_\_\_) Real Property

4 (\_\_\_) Tangible Personal Property

5 (\_\_\_) Stocks and Bonds

6 (\_\_\_) Commodities and Options

7 (\_\_\_) Banks and Other Financial Institutions

8 (\_\_\_) Operation of Entity or Business

9 (\_\_\_) Insurance and Annuities

10 (\_\_\_) Estates, Trusts, and Other Beneficial Interests

11 (\_\_\_) Claims and Litigation

12 (\_\_\_) Personal and Family Maintenance

13 (\_\_\_) Benefits from Governmental Programs or Civil or Military  
14 Service

15 (\_\_\_) Retirement Plans

16 (\_\_\_) Taxes

17 (\_\_\_) All Preceding Subjects

18 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

21 (CAUTION: Granting any of the following will give your agent the  
22 authority to take actions that could significantly reduce your  
23 property or change how your property is distributed at your death.

1 INITIAL ONLY the specific authority you WANT to give your agent.)

2 (\_\_\_) Create, amend, revoke, or terminate an inter vivos trust

3 (\_\_\_) Make a gift, subject to the limitations of the West Virginia

4 Uniform Power of Attorney Act and any special instructions

5 in this power of attorney

6 (\_\_\_) Create or change rights of survivorship

7 (\_\_\_) Create or change a beneficiary designation

8 (\_\_\_) Authorize another person to exercise the authority granted

9 under this power of attorney

10 (\_\_\_) Waive the principal's right to be a beneficiary of a joint

11 and survivor annuity, including a survivor benefit under a

12 retirement plan

13 (\_\_\_) Exercise fiduciary powers that the principal has authority to

14 delegate

15 [(\_\_\_) Disclaim or refuse an interest in property, including a

16 power of appointment]

17 **LIMITATION ON AGENT'S AUTHORITY**

18 An agent that is not my ancestor, spouse or descendant MAY

19 NOT use my property to benefit the agent or a person to whom the

20 agent owes an obligation of support unless I have included that

21 authority in the Special Instructions.

22 **SPECIAL INSTRUCTIONS (OPTIONAL)**

23 You may give special instructions on the following lines:



1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_

8 **EFFECTIVE DATE**

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

11 **NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)**

12

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

16 Name of Nominee for [conservator or guardian] of my estate:

17 \_\_\_\_\_

18 Nominee's Address: \_\_\_\_\_

19 Nominee's Telephone Number: \_\_\_\_\_

20 Name of Nominee for [guardian] of my person: \_\_\_\_\_

21 Nominee's Address: \_\_\_\_\_

22 Nominee's Telephone Number: \_\_\_\_\_

23 **RELIANCE ON THIS POWER OF ATTORNEY**

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

4 **SIGNATURE AND ACKNOWLEDGMENT**

5 \_\_\_\_\_  
6 Your Signature Date

7 Your Name Printed \_\_\_\_\_

8 Your Address \_\_\_\_\_

9 Your Telephone Number \_\_\_\_\_

10 State of \_\_\_\_\_

11 [County] of \_\_\_\_\_

12 This document was acknowledged before me on \_\_\_\_\_,  
13 (Date)

14 by \_\_\_\_\_.  
15 (Name of Principal)

16 \_\_\_\_\_ (Seal, if any)  
17 Signature of Notary

18 My commission expires: \_\_\_\_\_

19 [This document prepared by: \_\_\_\_\_]

20 **IMPORTANT INFORMATION FOR AGENT**

21 **Agent's Duties**

22 When you accept the authority granted under this power of  
23 attorney, a special legal relationship is created between you and  
24 the principal. This relationship imposes upon you legal duties  
25 that continue until you resign or the power of attorney is

1 terminated or revoked. You must:

2 (1) Do what you know the principal reasonably expects you to  
3 do with the principal's property or, if you do not know the  
4 principal's expectations, act in the principal's best interest;  
5 act in good faith;

6 (2) Do nothing beyond the authority granted in this power of  
7 attorney; and

8 (3) Disclose your identity as an agent whenever you act for  
9 the principal by writing or printing the name of the principal and  
10 signing your own name as "agent" in the following manner:

11 \_\_\_\_\_ by \_\_\_\_\_  
12 (Principal's Name) (Your Signature) as Agent

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

15 (1) Act loyally for the principal's benefit;

16 (2) Avoid conflicts that would impair your ability to act in  
17 the principal's best interest;

18 (3) Act with care, competence, and diligence;

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

21 (5) Cooperate with any person that has authority to make  
22 health-care decisions for the principal to do what you know the  
23 principal reasonably expects or, if you do not know the principal's

1 expectations, to act in the principal's best interest; and  
2 attempt to preserve the principal's estate plan if you know the  
3 plan and preserving the plan is consistent with the principal's  
4 best interest.

#### 5 **Termination of Agent's Authority**

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

11       (1) Death of the principal;

12       (2) The principal's revocation of the power of attorney or  
13 your authority;

14       (3) The occurrence of a termination event stated in the power  
15 of attorney;

16       (4) The purpose of the power of attorney is fully  
17 accomplished; or

18       (5) If you are married to the principal, a legal action is  
19 filed with a court to end your marriage or for your legal  
20 separation, unless the Special Instructions in this power of  
21 attorney state that such an action will not terminate your  
22 authority.

#### 23 **Liability of Agent**

1 The meaning of the authority granted to you is defined in the  
2 Uniform Power of Attorney Act [insert citation]. If you violate  
3 the Uniform Power of Attorney Act [insert citation] or act outside  
4 the authority granted, you may be liable for any damages caused by  
5 your violation.

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

8 **§39-6-602. Agent's certification**

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

11 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND**  
12 **AGENT'S AUTHORITY**

13 State of \_\_\_\_\_

14 [County] of \_\_\_\_\_]

15 I, \_\_\_\_\_ (Name of

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

17 \_\_\_\_\_ (Name of Principal) granted me

18 authority as an agent or successor agent in a power of attorney

19 dated \_\_\_\_\_.

20 I further [certify] that to my knowledge:

21 (1) The Principal is alive and has not revoked the Power of

22 Attorney or my authority to act under the Power of Attorney and the

1 Power of Attorney and my authority to act under the Power of  
2 Attorney have not terminated;

3 (2) If the Power of Attorney was drafted to become effective  
4 upon the happening of an event or contingency, the event or  
5 contingency has occurred;

6 (3) If I was named as a successor agent, the prior agent is no  
7 longer able or willing to serve; and

8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 (Insert other relevant statements)

12 **SIGNATURE AND ACKNOWLEDGMENT**

13 \_\_\_\_\_  
14 Agent's Signature Date

15 Agent's Name Printed \_\_\_\_\_

16 Agent's Address \_\_\_\_\_

17 Agent's Telephone Number \_\_\_\_\_

18 This document was acknowledged before me on \_\_\_\_\_,  
19 (Date)

20 by \_\_\_\_\_.  
21 (Name of Agent)

22 \_\_\_\_\_ (Seal, if any)  
23 Signature of Notary

24 My commission expires: \_\_\_\_\_

25 [This document prepared by: \_\_\_\_\_]

1 **ARTICLE 7. MISCELLANEOUS PROVISIONS.**

2 **§39-7-701. Uniformity of application and construction.**

3 In applying and construing the provisions of this article,  
4 consideration must be given to the need to promote uniformity of  
5 the law with respect to its subject matter among the states that  
6 enact it.

7 **§39-7-702. Relation to electronic signatures in Global and**  
8 **National Commerce Act.**

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

15 **§39-7-703. Effect on existing powers of attorney.**

16 (a) Except as otherwise provided in this article, on the  
17 effective date of this article its provisions apply to:

18 (1) A power of attorney created before, on, or after the  
19 effective date of this article;

20 (2) A judicial proceeding concerning a power of attorney  
21 commenced on or after the effective date of this article; and

22 (3) A judicial proceeding concerning a power of attorney

1 commenced before the effective date of this article unless the  
2 court finds that application of a provision of this article would  
3 substantially interfere with the effective conduct of the judicial  
4 proceeding or prejudice the rights of a party, in which case that  
5 provision does not apply and the superseded law applies.

6 (b) An act done before the effective date of this article is  
7 not affected by this article.

8 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.**

9 **ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.**

10 **§44A-3-3. Distributive duties and powers of the conservator of a**  
11 **protected person.**

12 (a) A conservator of a protected person, without the necessity  
13 of seeking prior court authorization, shall apply the income and  
14 principal of the estate as needed for the protected person's  
15 support, care, health, and if applicable, habilitation, education  
16 or therapeutic needs. A conservator shall also apply the income  
17 and principal as needed for the support of any legal dependents who  
18 are unable to support themselves and who are in need of support.

19 (b) A conservator, when making distributions, shall exercise  
20 authority only to the extent necessitated by the protected person's  
21 limitations, and shall, where feasible, encourage the protected  
22 person to participate in decisions, to act on his or her own  
23 behalf, and to develop or regain the capacity to manage the estate



1 and his or her financial affairs. A conservator shall also  
2 consider the size of the estate, the probable duration of the  
3 conservatorship, the protected person's accustomed manner of  
4 living, other resources known to the conservator to be available,  
5 and the recommendations of the guardian.

6 (c) A conservator shall, to the extent known, consider the  
7 express desires and personal values of the protected person when  
8 making decisions, and shall otherwise act in the protected person's  
9 best interests and exercise reasonable care, diligence and  
10 prudence.

11 ~~(d) A conservator may not revoke or amend a durable power of~~  
12 ~~attorney which has been executed by the protected person without~~  
13 ~~the prior approval of the court.~~

NOTE: The purpose of this bill is to create the Uniform Power of Attorney Act and to repeal the Uniform Durable Power of Attorney Act and a portion of a statute in conflict with the Act.

Articles §39-4, §39-5, §39-6 and §39-7 are new; therefore, strike-throughs and underscoring have been omitted.

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