

**H. B. 4390**

(By Delegates Doyle, Rodighiero, Ferro,  
Frazier, Reynolds, Storch and Walters)

[Introduced February 1, 2012; referred to the  
Committee on the Judiciary.]

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,  
designated §39-6-601 and §39-6-602; to amend said code by  
adding thereto a new article, designated §39-7-701, §39-7-702

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

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

17 *Be it enacted by the Legislature of West Virginia:*

18 That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and  
19 §39-4-7 of the Code of West Virginia, 1931, as amended, be  
20 repealed; that said code be amended by adding thereto a new  
21 article, designated §39-4-401, §39-4-402, §39-4-403, §39-4-404,  
22 §39-4-405, §39-4-406, §39-4-407, §39-4-408, §39-4-409, §39-4-410,  
23 §39-4-411, §39-4-412, §39-4-413, §39-4-414, §39-4-415, §39-4-416,  
24 §39-4-417, §39-4-418, §39-4-419, §39-4-420, §39-4-421, §39-4-422

1 and §39-4-423; that said code be amended by adding thereto a new  
2 article, designated §39-5-501, §39-5-502, §39-5-503, §39-5-504,  
3 §39-5-505, §39-5-506, §39-5-507, §39-5-508, §39-5-509, §39-5-510,  
4 §39-5-511, §39-5-512, §39-5-513, §39-5-514, §39-5-515, §39-5-516  
5 and §39-5-517; that said code be amended by adding thereto a new  
6 article, designated §39-6-601 and §39-6-602; that said code be  
7 amended by adding thereto a new article, designated §39-7-701,  
8 §39-7-702 and §39-7-703; and that §44A-3-3 of said code be amended  
9 and reenacted, all to read as follows:

10                   **CHAPTER 39. RECORDS AND PAPERS.**

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

12 **§39-4-401. Short title.**

13       This article may be cited as the Uniform Power of Attorney  
14 Act.

15 **§39-4-402. Definitions.**

16       In this article:

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

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

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

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

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

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

10       (B) Is:

11       (I) Detained, including incarcerated in a penal system; or

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

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

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

21       (8) "Presently exercisable general power of appointment," with  
22 respect to property or a property interest subject to a power of  
23 appointment, means power exercisable at the time in question to  
24 vest absolute ownership in the principal individually, the

1 principal's estate, the principal's creditors or the creditors of  
2 the principal's estate. The term includes a power of appointment  
3 not exercisable until the occurrence of a specified event, the  
4 satisfaction of an ascertainable standard, or the passage of a  
5 specified period only after the occurrence of the specified event,  
6 the satisfaction of the ascertainable standard or the passage of  
7 the specified period. The term does not include a power exercisable  
8 in a fiduciary capacity or only by will.

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

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

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

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

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

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

22       (13) "State" means a state of the United States, the District  
23 of Columbia, Puerto Rico, the United States Virgin Islands or any  
24 territory or insular possession subject to the jurisdiction of the

1 United States.

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

7 **§39-4-403. Applicability.**

8 This article applies to all powers of attorney except:

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

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

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

15 (4) A power created on a form prescribed by a government or  
16 governmental subdivision, agency or instrumentality for a  
17 governmental purpose.

18 **§39-4-404. Power of attorney is durable.**

19 A power of attorney created under this article is durable  
20 unless it expressly provides that it is terminated by the  
21 incapacity of the principal.

22 **§39-4-405. Execution of power of attorney.**

23 A power of attorney must be signed by the principal or in the  
24 principal's conscious presence by another individual directed by

1 the principal to sign the principal's name on the power of  
2 attorney. A signature on a power of attorney is presumed to be  
3 genuine if the principal acknowledges the signature before a notary  
4 public or other individual authorized by law to take  
5 acknowledgments.

6 **§39-4-406. Validity of power of attorney.**

7 (a) A power of attorney executed in this state on or after  
8 July 1, 2012, is valid if its execution complies with section four  
9 hundred five of this article.

10 (b) A power of attorney executed in this state before July 1,  
11 2012, is valid if its execution complied with the law of this state  
12 as it existed at the time of execution.

13 © A power of attorney executed other than in this state is  
14 valid in this state if, when the power of attorney was executed,  
15 the execution complied with:

16 (1) The law of the jurisdiction that determines the meaning  
17 and effect of the power of attorney pursuant to section one hundred  
18 seven of this article; or

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

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

24 **§39-4-407. Meaning and effect of power of attorney.**



1 The meaning and effect of a power of attorney is determined by  
2 the law of the jurisdiction indicated in the power of attorney and,  
3 in the absence of an indication of jurisdiction, by the law of the  
4 jurisdiction in which the power of attorney was executed.

5 **§39-4-408. Nomination of conservator or guardian; relation of**  
6 **agent to court-appointed fiduciary.**

7 (a) In a power of attorney, a principal may nominate a  
8 conservator of the principal's estate or guardian of the  
9 principal's person for consideration by the court if protective  
10 proceedings for the principal's estate or person are begun after  
11 the principal executes the power of attorney. In the protective  
12 proceedings the court shall consider the nomination in accordance  
13 with the provisions of section eight, article two, chapter  
14 forty-four-a of this code.

15 (b) If, after a principal executes a power of attorney, a  
16 court appoints a conservator of the principal's estate or other  
17 fiduciary charged with the management of some or all of the  
18 principal's property, the agent is accountable to the fiduciary as  
19 well as to the principal. Unless otherwise ordered by the court  
20 making the appointment, the power of attorney and the agent's  
21 authority thereunder terminates upon the appointment.

22 **§39-4-409. When power of attorney effective.**

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

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

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

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

14 (1) A physician or licensed psychologist that the principal is  
15 incapacitated within the meaning of section one hundred two (5) (A)  
16 of this article; or

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

20 (d) A person authorized by the principal in the power of  
21 attorney to determine that the principal is incapacitated may act  
22 as the principal's personal representative pursuant to the Health  
23 Insurance Portability and Accountability Act, Sections 1171 through  
24 1179 of the Social Security Act, 42 U.S.C. 1320d, as amended, and

1 applicable regulations, to obtain access to the principal's  
2 health-care information and communicate with the principal's  
3 health-care provider.

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

5 (a) A power of attorney terminates when:

6 (1) The principal dies;

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

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

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

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

12 (6) The principal revokes the agent's authority or the agent  
13 dies, becomes incapacitated, or resigns, and the power of attorney  
14 does not provide for another agent to act under the power of  
15 attorney.

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

17 (1) The principal revokes the authority;

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

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

22 (4) The power of attorney terminates.

23 © Unless the power of attorney otherwise provides, an agent's  
24 authority is exercisable until the authority terminates pursuant to

1 this section, notwithstanding a lapse of time since the execution  
2 of the power of attorney.

3 (d) Termination of an agent's authority or of a power of  
4 attorney is not effective as to the agent or another person that,  
5 without actual knowledge of the termination, acts in good faith  
6 under the power of attorney. An act so performed, unless otherwise  
7 invalid or unenforceable, binds the principal and the principal's  
8 successors in interest.

9 (e) Incapacity of the principal of a power of attorney that is  
10 not durable does not revoke or terminate the power of attorney as  
11 to an agent or other person who, without actual knowledge of the  
12 incapacity, acts in good faith under the power of attorney. An act  
13 so performed, unless otherwise invalid or unenforceable, binds the  
14 principal and the principal's successors in interest.

15 (f) The execution of a power of attorney does not revoke a  
16 power of attorney previously executed by the principal unless the  
17 subsequent power of attorney provides that the previous power of  
18 attorney is revoked or that all other powers of attorney are  
19 revoked.

20 **§39-4-411. Coagents and successor agents.**

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

1 or transaction.

2 (b) A principal may designate one or more successor agents to  
3 act if an agent resigns, dies, becomes incapacitated, is not  
4 qualified to serve, or declines to serve. A principal may grant  
5 authority to designate one or more successor agents to an agent or  
6 other person designated by name, office or function. Unless the  
7 power of attorney otherwise provides, a successor agent:

8 (1) Has the same authority as that granted to the original  
9 agent; and

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

13 © Except as otherwise provided in the power of attorney and  
14 this article, an agent who does not participate in or conceal a  
15 breach of fiduciary duty committed by another agent, including a  
16 predecessor agent, is not liable for the actions of the other  
17 agent.

18 (d) An agent who has actual knowledge of a breach or imminent  
19 breach of fiduciary duty by another agent has a duty to notify the  
20 principal and, if the principal is incapacitated, take any action  
21 reasonably appropriate in the circumstances to safeguard the  
22 principal's best interest. An agent who fails to notify the  
23 principal or take action as required by this article is liable for  
24 the reasonably foreseeable damages that could have been avoided if

1 the agent had notified the principal or taken such action.

2 **§39-4-412. Reimbursement and compensation of agent.**

3 Unless the power of attorney otherwise provides, an agent is  
4 entitled to reimbursement of expenses reasonably incurred on behalf  
5 of the principal and to compensation that is reasonable under the  
6 circumstances: *Provided*, That an agent who is related to the  
7 principal as an ancestor, spouse or descendent is not entitled to  
8 compensation for services as agent, unless the power of attorney  
9 specifically provides for compensation.

10 **§39-4-413. Agent's acceptance.**

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

15 **§39-4-414. Agent's duties.**

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

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

21 (2) Act in good faith; and

22 (3) Act only within the scope of authority granted in the  
23 power of attorney.

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

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

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

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

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

11       (5) Cooperate with a person that has authority to make  
12 health-care decisions for the principal to carry out the  
13 principal's reasonable expectations to the extent actually known by  
14 the agent and, otherwise, act in the principal's best interest; and

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

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

20       (B) The principal's foreseeable obligations and need for  
21 maintenance;

22       © Minimization of taxes, including income, estate,  
23 inheritance, generation-skipping transfer and gift taxes; and

24       (D) Eligibility for a benefit, a program or assistance under

1 a statute or regulation.

2 © An agent that acts in good faith is not liable to any  
3 beneficiary of the principal's estate plan for failure to preserve  
4 the plan.

5 (d) An agent that acts with care, competence and diligence for  
6 the best interest of the principal is not liable solely because the  
7 agent also benefits from the act or has an individual or  
8 conflicting interest in relation to the property or affairs of the  
9 principal.

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

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

18 (g) An agent who exercises authority to delegate to another  
19 person the authority granted by the principal or who engages  
20 another person on behalf of the principal is not liable for an act,  
21 error of judgment or default of that person if the agent exercises  
22 care, competence and diligence in selecting and monitoring the  
23 person.

24 (h) Except as otherwise provided in the power of attorney, an



1 agent is not required to disclose receipts, disbursements or  
2 transactions conducted on behalf of the principal or provide an  
3 accounting unless: (1) Ordered by a court; or (2) requested by the  
4 principal, a guardian, a conservator, another fiduciary acting for  
5 the principal, a governmental agency having authority to protect  
6 the welfare of the principal or, upon the death of the principal,  
7 by the personal representative or successor in interest of the  
8 principal's estate. If so requested, within thirty days the agent  
9 shall comply with the request or provide a writing or other record  
10 substantiating why additional time is needed and shall comply with  
11 the request within an additional thirty days. If an agent fails or  
12 refuses to comply with the provisions of this section, the court  
13 may award the principal or other authorized party requesting the  
14 disclosure reimbursement of reasonable attorneys fees and costs  
15 incurred.

16 **§39-4-415. Exoneration of agent.**

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

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

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

3 **§39-4-416. Judicial relief.**

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

7       (1) The principal or the agent;

8       (2) A guardian, conservator or other fiduciary acting for the  
9 principal;

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

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

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

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

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

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

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

24       (b) Upon motion by the principal, the court shall dismiss a

1 petition filed under this section, unless the court finds that the  
2 principal lacks capacity to revoke the agent's authority or the  
3 power of attorney.

4 **§39-4-417. Agent's liability.**

5 An agent that violates this article is liable to the principal  
6 or the principal's successors in interest for the amount required  
7 to:

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

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

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

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

18 **§39-4-418. Agent's resignation; notice.**

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

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

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

1 (A) The principal's caregiver;

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

4 © A governmental agency having authority to protect the  
5 welfare of the principal.

6 **§39-4-419. Acceptance of and reliance upon acknowledged power of**  
7 **attorney.**

8 (a) For purposes of this section and section four hundred five  
9 of this article, "acknowledged" means purportedly verified before  
10 a notary public or other individual authorized to take  
11 acknowledgments.

12 (b) A person who in good faith accepts an acknowledged power  
13 of attorney without actual knowledge that the signature is not  
14 genuine may rely upon the presumption under the provisions of  
15 section four hundred five of this article that the signature is  
16 genuine.

17 © A person who in good faith accepts an acknowledged power of  
18 attorney without actual knowledge that the power of attorney is  
19 void, invalid or terminated, that the purported agent's authority  
20 is void, invalid or terminated, or that the agent is exceeding or  
21 improperly exercising the agent's authority may rely upon the power  
22 of attorney as if the power of attorney were genuine, valid and  
23 still in effect, the agent's authority were genuine, valid and  
24 still in effect, and the agent had not exceeded and had properly

1 exercised the authority except as to a conveyance of interests in  
2 real property where the principal has previously filed a notice of  
3 termination of the power of attorney in the office of the clerk of  
4 the county commission in the county in which the property is  
5 located.

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

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

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

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

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

21 (f) For purposes of this section and article, a person who  
22 conducts activities through employees is without actual knowledge  
23 of a fact relating to a power of attorney, a principal or an agent  
24 if the employee conducting the transaction involving the power of

1 attorney is without actual knowledge of the fact.

2 **§39-4-420. Liability for refusal to accept acknowledged statutory**  
3 **form power of attorney.**

4 (a) In this section, "statutory form power of attorney" means  
5 a power of attorney substantially in the form provided in this  
6 article or that meets the requirements for a military power of  
7 attorney pursuant to 10 U.S.C. 1044b, as amended.

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

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

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

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

22 © A person is not required to accept an acknowledged statutory  
23 form power of attorney if:

24 (1) The person is not otherwise required to engage in a

1 transaction with the principal in the same circumstances;

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

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

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

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

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

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

1 proceeding that confirms the validity of the power of attorney or  
2 mandates acceptance of the power of attorney.

3 **§39-4-421. Principles of law and equity.**

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

6 **§39-4-422. Laws applicable to financial institutions and entities.**

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

10 **§39-4-423. Remedies under other law.**

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

14 **ARTICLE 5. AUTHORITY.**

15 **§39-5-501. Authority that requires specific grant; grant of**  
16 **general authority.**

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

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



- 1       (2) Make a gift;
- 2       (3) Create or change rights of survivorship;
- 3       (4) Create or change a beneficiary designation;
- 4       (5) Delegate authority granted under the power of attorney;
- 5       (6) Waive the principal's right to be a beneficiary of a joint  
6 and survivor annuity, including a survivor benefit under a  
7 retirement plan;
- 8       (7) Exercise fiduciary powers that the principal has authority  
9 to delegate; or
- 10       (8) Disclaim property, including a power of appointment.
- 11       (b) Notwithstanding a grant of authority to do an act  
12 described in this section, unless the power of attorney otherwise  
13 provides, an agent that is not an ancestor, spouse or descendant of  
14 the principal may not exercise authority under a power of attorney  
15 to create in the agent, or in an individual to whom the agent owes  
16 a legal obligation of support, an interest in the principal's  
17 property, whether by gift, right of survivorship, beneficiary  
18 designation, disclaimer or otherwise.
- 19       © Subject to subsections (a), (b), (d) and (e) of this  
20 section, if a power of attorney grants to an agent authority to do  
21 all acts that a principal could do, the agent has the general  
22 authority described in this article.
- 23       (d) Unless the power of attorney otherwise provides, a grant  
24 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.

24 © A principal may modify authority incorporated by reference.

1 **§39-5-503. Construction of authority generally.**

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

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

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

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

22 (4) Initiate, participate in, submit to alternative dispute  
23 resolution, settle, oppose or propose or accept a compromise with  
24 respect to a claim existing in favor of or against the principal or

1 intervene in litigation relating to the claim;

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

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

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

10 (8) Communicate with any representative or employee of a  
11 government or governmental subdivision, agency or instrumentality,  
12 on behalf of the principal;

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

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

18 **§39-5-504. Real property.**

19 (a) Unless the power of attorney otherwise provides, language  
20 in a power of attorney granting general authority with respect to  
21 real property authorizes the agent to:

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

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

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

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

18       (5) Manage or conserve an interest in real property or a right  
19 incident to real property owned or claimed to be owned by the  
20 principal, including:

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

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

24       © Paying, assessing, compromising or contesting taxes or

1 assessments or applying for and receiving refunds in connection  
2 with them; and

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

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

9 (7) Participate in a reorganization with respect to real  
10 property or an entity that owns an interest in or right incident to  
11 real property and receive, hold and act with respect to stocks and  
12 bonds or other property received in a plan of reorganization,  
13 including:

14 (A) Selling or otherwise disposing of them;

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

17 © Exercising any voting rights in person or by proxy;

18 (8) Change the form of title of an interest in or right  
19 incident to real property; and

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

23 (b) In order to exercise the powers provided in subdivisions  
24 (2), (3), (8) and (9), subsection (a) of this section, or to

1 release or assign and interest in real property as described in  
2 subdivision (4), subsection (a) of this section, the power of  
3 attorney must first be recorded in the office of the clerk of the  
4 county commission in the county in which the property is located.

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

6 Unless the power of attorney otherwise provides, language in  
7 a power of attorney granting general authority with respect to  
8 tangible personal property authorizes the agent to:

9 (1) Demand, buy, receive or accept as a gift or as security  
10 for an extension of credit, or otherwise acquire or reject  
11 ownership or possession of tangible personal property or an  
12 interest in tangible personal property;

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

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

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

1 interest in tangible personal property;

2 (5) Manage or conserve tangible personal property or an  
3 interest in tangible personal property on behalf of the principal,  
4 including:

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

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

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

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

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

13 and

14 (F) Using and making repairs, alterations or improvements to  
15 the property; and

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

18 **§39-5-506. Stocks and bonds.**

19 Unless the power of attorney otherwise provides, language in  
20 a power of attorney granting general authority with respect to  
21 stocks and bonds authorizes the agent to:

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

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



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

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

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

8 **§39-5-507. Commodities and options.**

9       Unless the power of attorney otherwise provides, language in  
10 a power of attorney granting general authority with respect to  
11 commodities and options authorizes the agent to:

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

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

16 **§39-5-508. Banks and other financial institutions.**

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

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

22       (2) Establish, modify and terminate an account or other  
23 banking arrangement with a bank, trust company, savings and loan  
24 association, credit union, thrift company, brokerage firm or other

1 financial institution selected by the agent;

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

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

8 (5) Receive statements of account, vouchers, notices and  
9 similar documents from a financial institution and act with respect  
10 to them;

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

13 (7) Borrow money and pledge as security personal property of  
14 the principal necessary to borrow money or pay, renew or extend the  
15 time of payment of a debt of the principal or a debt guaranteed by  
16 the principal;

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

23 (9) Receive for the principal and act upon a sight draft,  
24 warehouse receipt or other document of title whether tangible or

1 electronic or other negotiable or nonnegotiable instrument;

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

6 (11) Consent to an extension of the time of payment with  
7 respect to commercial paper or a financial transaction with a  
8 financial institution.

9 **§39-5-509. Operation of entity or business.**

10 Subject to the terms of a document or an agreement governing  
11 an entity or an entity ownership interest, and unless the power of  
12 attorney otherwise provides, language in a power of attorney  
13 granting general authority with respect to operation of an entity  
14 or business authorizes the agent to:

15 (1) Operate, buy, sell, enlarge, reduce or terminate an  
16 ownership interest;

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

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

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

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

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

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

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

13       (B) Determine:

14       (I) The location of its operation;

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

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

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

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

21       © Change the name or form of organization under which the  
22 entity or business is operated and enter into an ownership  
23 agreement with other persons to take over all or part of the  
24 operation of the entity or business; and

1 (D) Demand and receive money due or claimed by the principal  
2 or on the principal's behalf in the operation of the entity or  
3 business and control and disburse the money in the operation of the  
4 entity or business;

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

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

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

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

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

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

21 **§39-5-510. Insurance and annuities.**

22 Unless the power of attorney otherwise provides, language in  
23 a power of attorney granting general authority with respect to  
24 insurance and annuities authorizes the agent to:

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

6       (2) Procure new, different and additional contracts of  
7 insurance and annuities for the principal and the principal's  
8 spouse, children and other dependents, and select the amount, type  
9 of insurance or annuity and mode of payment;

10       (3) Pay the premium or make a contribution on, modify,  
11 exchange, rescind, release or terminate a contract of insurance or  
12 annuity procured by the agent;

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

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

17       (6) Exercise an election;

18       (7) Exercise investment powers available under a contract of  
19 insurance or annuity;

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

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

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

4       (11) Collect, sell, assign, hypothecate, borrow against or  
5 pledge the interest of the principal in a contract of insurance or  
6 annuity;

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

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

14 **§39-5-511. Estates, trusts and other beneficial interests.**

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

20       (b) Unless the power of attorney otherwise provides, language  
21 in a power of attorney granting general authority with respect to  
22 estates, trusts and other beneficial interests authorizes the agent  
23 to:

24       (1) Accept, receive, receipt for, sell, assign, pledge or

1 exchange a share in or payment from an estate, trust or other  
2 beneficial interest;

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

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

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

14       (5) Initiate, participate in, submit to alternative dispute  
15 resolution, settle, oppose or propose or accept a compromise with  
16 respect to litigation to remove, substitute or surcharge a  
17 fiduciary;

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

20       (7) Transfer an interest of the principal in real property,  
21 stocks and bonds, accounts with financial institutions or  
22 securities intermediaries, insurance, annuities and other property  
23 to the trustee of a revocable trust created by the principal as  
24 settler; and



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

4 **§39-5-512. Claims and litigation.**

5       Unless the power of attorney otherwise provides, language in  
6 a power of attorney granting general authority with respect to  
7 claims and litigation authorizes the agent to:

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

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

16       (3) Seek an attachment, garnishment, order of arrest or other  
17 preliminary, provisional or intermediate relief and use an  
18 available procedure to effect or satisfy a judgment, order or  
19 decree;

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

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

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

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

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

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

22 **§39-5-513. Personal and family maintenance.**

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

1 personal and family maintenance authorizes the agent to:

2 (1) Perform the acts necessary to maintain the customary  
3 standard of living of the principal, the principal's spouse and the  
4 following individuals, whether living when the power of attorney is  
5 executed or later born:

6 (A) The principal's children;

7 (B) Other individuals legally entitled to be supported by the  
8 principal; and

9 © The individuals whom the principal has customarily supported  
10 or indicated the intent to support;

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

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

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

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

20 (4) Provide normal domestic help, usual vacations and travel  
21 expenses, and funds for shelter, clothing, food, appropriate  
22 education, including postsecondary and vocational education and  
23 other current living costs for the individuals described in  
24 subdivision (1) of this section;

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

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

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

16       (8) Maintain credit and debit accounts for the convenience of  
17 the individuals described in subdivision (1) of this section and  
18 open new accounts; and

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

23       (b) Authority with respect to personal and family maintenance  
24 is neither dependent upon, nor limited by, authority that an agent

1 may or may not have with respect to gifts under this article.

2 **§39-5-514. Benefits from governmental programs or civil or**  
3 **military service.**

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

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

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

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

24 (3) Enroll in, apply for, select, reject, change, amend or

1 discontinue, on the principal's behalf, a benefit or program;

2 (4) Prepare, file and maintain a claim of the principal for a  
3 benefit or assistance, financial or otherwise, to which the  
4 principal may be entitled under a statute or rule;

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

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

12 **§39-5-515. Retirement plans.**

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

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

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

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

1       (4) An annuity or mutual fund custodial account under Internal  
2 Revenue Code 403(b), 26 U.S.C. 403(b), as amended;

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

6       (6) A plan under Internal Revenue Code 457(b), 26 U.S.C.  
7 457(b), as amended; and

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

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

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

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

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

18       (4) Make contributions to a retirement plan;

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

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

23 **§39-5-516. Taxes.**

24       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  
24 as defined under Internal Revenue Code 529, 26 U.S.C. 529, as



1 amended.

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

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

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

20 © An agent may make a gift of the principal's property only as  
21 the agent determines is consistent with the principal's objectives  
22 if actually known by the agent and, if unknown, as the agent  
23 determines is consistent with the principal's best interest based  
24 on all relevant factors, including:

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

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

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

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

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

10 **ARTICLE 6. STATUTORY FORMS.**

11 **§39-6-601. Statutory form power of attorney.**

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

15 **State of West Virginia**

16 **STATUTORY FORM POWER OF ATTORNEY**

17 **IMPORTANT INFORMATION**

18       This power of attorney authorizes another person (your agent)  
19 to make decisions concerning your property for you (the principal).

20 Your agent will be able to make decisions and act with respect to  
21 your property (including your money) whether or not you are able to  
22 act for yourself. The meaning of authority over subjects listed on  
23 this form is explained in the Uniform Power of Attorney Act [insert

1 citation].

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

4 You should select someone you trust to serve as your agent.

5 Unless you specify otherwise, generally the agent's authority will  
6 continue until you die or revoke the power of attorney or the agent  
7 resigns or is unable to act for you.

8 Your agent is entitled to reasonable compensation unless you  
9 state otherwise in the special instructions. This form provides for  
10 designation of one agent. If you wish to name more than one agent  
11 you may name a coagent in the Special Instructions. Coagents are  
12 not required to act together unless you include that requirement in  
13 the Special Instructions. If your agent is unable or unwilling to  
14 act for you, your power of attorney will end unless you have named  
15 a successor agent. You may also name a second successor agent.

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

18 **If you have questions about the power of attorney or the**  
19 **authority you are granting to your agent, you should seek legal**  
20 **advice before signing this form.**

21 **DESIGNATION OF AGENT**

22 I \_\_\_\_\_ name the following person as my agent:

23 (Name of Principal)

1 Name of Agent: \_\_\_\_\_

2 Agent's Address: \_\_\_\_\_

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

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

5 successor agent:

6 Name of Successor Agent: \_\_\_\_\_

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

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

9 If my successor agent is unable or unwilling to act for me, I

10 name as my second successor agent:

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

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

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

14 **GRANT OF GENERAL AUTHORITY**

15 I grant my agent and any successor agent general authority to

16 act for me with respect to the following subjects as defined in the

17 Uniform Power of Attorney Act [insert citation]:

18 (INITIAL each subject you want to include in the agent's general

19 authority. If you wish to grant general authority over all of the

20 subjects you may initial "All Preceding Subjects" instead of

21 initialing each subject.)

22 (  ) Real Property

23 (  ) Tangible Personal Property

24 (  ) Stocks and Bonds

- 1  Commodities and Options
- 2  Banks and Other Financial Institutions
- 3  Operation of Entity or Business
- 4  Insurance and Annuities
- 5  Estates, Trusts, and Other Beneficial Interests
- 6  Claims and Litigation
- 7  Personal and Family Maintenance
- 8  Benefits from Governmental Programs or Civil or Military
- 9 Service
- 10  Retirement Plans
- 11  Taxes
- 12  All Preceding Subjects
- 13 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**
- 14 My agent MAY NOT do any of the following specific acts for me
- 15 UNLESS I have INITIALED the specific authority listed below:
- 16 (CAUTION: Granting any of the following will give your agent the
- 17 authority to take actions that could significantly reduce your
- 18 property or change how your property is distributed at your death.
- 19 INITIAL ONLY the specific authority you WANT to give your agent.)
- 20  Create, amend, revoke, or terminate an inter vivos trust
- 21  Make a gift, subject to the limitations of the West Virginia
- 22 Uniform Power of Attorney Act and any special instructions
- 23 in this power of attorney
- 24  Create or change rights of survivorship

- 1 ( ) Create or change a beneficiary designation
- 2 ( ) Authorize another person to exercise the authority granted
- 3 under this power of attorney
- 4 ( ) 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 ( ) Exercise fiduciary powers that the principal has authority to
- 8 delegate
- 9 [( ) Disclaim or refuse an interest in property, including a
- 10 power of appointment]

11 **LIMITATION ON AGENT'S AUTHORITY**

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

16 **SPECIAL INSTRUCTIONS (OPTIONAL)**

17 You may give special instructions on the following lines:  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_

1 **EFFECTIVE DATE**

2 This power of attorney is effective immediately unless I have  
3 stated otherwise in the special instructions.

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

5

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

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

10 \_\_\_\_\_

11 Nominee's Address: \_\_\_\_\_

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

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

14 Nominee's Address: \_\_\_\_\_

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

16 **RELIANCE ON THIS POWER OF ATTORNEY**

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

20 **SIGNATURE AND ACKNOWLEDGMENT**

21 \_\_\_\_\_

22 Your Signature

Date

23 Your Name Printed \_\_\_\_\_

1 Your Address

2 Your Telephone Number

3 State of

4 [County] of

5 This document was acknowledged before me on

6 (Date)

7 by

8 (Name of Principal)

9 (Seal, if any)

10 Signature of Notary

11 My commission expires:

12 [This document prepared by:

13 **IMPORTANT INFORMATION FOR AGENT**

14 **Agent's Duties**

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

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

24 (2) Do nothing beyond the authority granted in this power of





1 authority under this power of attorney. Events that terminate a  
2 power of attorney or your authority to act under a power of  
3 attorney include:

4 (1) Death of the principal;

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

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

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

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

16 **Liability of Agent**

17 The meaning of the authority granted to you is defined in the  
18 Uniform Power of Attorney Act [insert citation]. If you violate  
19 the Uniform Power of Attorney Act [insert citation] or act outside  
20 the authority granted, you may be liable for any damages caused by  
21 your violation.

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

1 **§39-6-602. Agent's certification**

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

4 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND**

5 **AGENT'S AUTHORITY**

6 State of \_\_\_\_\_

7 [County] of \_\_\_\_\_]

8 I, \_\_\_\_\_ (Name of

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

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

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

12 dated \_\_\_\_\_.

13 I, Further [certify] that to my knowledge:

14 (1) The Principal is alive and has not revoked the power of

15 attorney or my authority to act under the power of attorney and the

16 power of attorney and my authority to act under the power of

17 attorney have not terminated;

18 (2) If the power of attorney was drafted to become effective

19 upon the happening of an event or contingency, the event or

20 contingency has occurred;

21 (3) If I was named as a successor agent, the prior agent is no

22 longer able or willing to serve; and

23 \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_

3 (Insert other relevant statements)

4 **SIGNATURE AND ACKNOWLEDGMENT**

5 \_\_\_\_\_

6 Agent's Signature Date

7 Agent's Name Printed \_\_\_\_\_

8 Agent's Address \_\_\_\_\_

9 Agent's Telephone Number \_\_\_\_\_

10 This document was acknowledged before me on \_\_\_\_\_,

11 (Date)

12 by \_\_\_\_\_.

13 (Name of Agent)

14 \_\_\_\_\_ (Seal, if any)

15 Signature of Notary

16 My commission expires: \_\_\_\_\_

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

18 **ARTICLE 7. MISCELLANEOUS PROVISIONS.**

19 **§39-7-701. Uniformity of application and construction.**

20 In applying and construing the provisions of this article,  
21 consideration must be given to the need to promote uniformity of  
22 the law with respect to its subject matter among the states that  
23 enact it.

1 §39-7-702. Relation to electronic signatures in Global and  
2 National Commerce Act.

3 This [act] modifies, limits and supersedes the federal  
4 Electronic Signatures in Global and National Commerce Act, 15 U.S.C.  
5 Section 7001 et seq., but does not modify, limit or supersede  
6 Section 101© of that act, 15 U.S.C. Section 7001©, or authorize  
7 electronic delivery of any of the notices described in Section  
8 103(b) of that act, 15 U.S.C. Section 7003(b).

9 §39-7-703. Effect on existing powers of attorney.

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

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

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

16 (3) A judicial proceeding concerning a power of attorney  
17 commenced before the effective date of this article unless the  
18 court finds that application of a provision of this article would  
19 substantially interfere with the effective conduct of the judicial  
20 proceeding or prejudice the rights of a party, in which case that  
21 provision does not apply and the superseded law applies.

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

1 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP**

2 **AND CONSERVATORSHIP ACT.**

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

4 **§44A-3-3. Distributive duties and powers of the conservator of a**  
5 **protected person.**

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

13 (b) A conservator, when making distributions, shall exercise  
14 authority only to the extent necessitated by the protected person's  
15 limitations, and shall, where feasible, encourage the protected  
16 person to participate in decisions, to act on his or her own  
17 behalf, and to develop or regain the capacity to manage the estate  
18 and his or her financial affairs. A conservator shall also  
19 consider the size of the estate, the probable duration of the  
20 conservatorship, the protected person's accustomed manner of  
21 living, other resources known to the conservator to be available,  
22 and the recommendations of the guardian.

23 © A conservator shall, to the extent known, consider the

1 express desires and personal values of the protected person when  
2 making decisions, and shall otherwise act in the protected person's  
3 best interests and exercise reasonable care, diligence and  
4 prudence.

5 ~~(d) A conservator may not revoke or amend a durable power of~~  
6 ~~attorney which has been executed by the protected person without~~  
7 ~~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, they have been completely underscored.

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