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BILL ANALYSIS

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House Bills 4644 through 4646 (as passed by the House)
Sponsor: Representative Kara Hope (H.B. 4644)
Representative Jim Haadsma (H.B. 4645 & 4646)
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

Generally, a power of attorney is a document that allows an individual (principal) to grant authority to another individual (agent) to act on behalf of the principal in specified matters. Sections of the Estates and Protected Individuals Code (EPIC) currently govern durable powers of attorney in the State, which are powers of attorney that are not terminated by a principal's incapacity, as authorized previously by the principal. The bills would repeal those sections of EPIC and enact the "Uniform Power of Attorney Act", establishing a durable power of attorney process in the State that was like the process established in 30 other states (see **BACKGROUND**).

The "Uniform Power of Attorney Act" would provide for the authorities, powers, and duties of an agent and principal under a power of attorney. The Act would prescribe the process for the establishment of a power of attorney, from its execution and effective date to its termination. The Act also would entitle an agent to reimbursement and compensation unless prohibited in a power of attorney and prescribe restitution due to a principal for an agent's violation of a power of attorney. The Act would apply to a power of attorney in the State created before, on, or after the Act's effective date. The Act would apply to a power of attorney in a judicial proceeding on or after the Act's effective date.

The Act would take effect July 1, 2024. House Bill 4644 is tie-barred to House Bills 4645 and 4646, which are tie-barred to House Bill 4644.

FISCAL IMPACT

The bills would have no direct fiscal impact upon the state or local governments. There could be a positive, indirect, fiscal impact to both. Uniformity in matters of estates, real and personal property, and agency could reduce confusion and or procedural hurdles, particularly when statutory conformity crosses state lines. Any indirect fiscal impact cannot be accurately determined.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

House Bills 4644, 4645, and 4646 are reintroductions of Senate Bills 1148, 1149, and 1150, respectively, from the 2021-2022 Legislative Session.

MCL 324.20101b (H.B. 4645)
333.10121 & 333.10301 (H.B. 4646)

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CONTENT

House Bill 4644 would enact the "Uniform Power of Attorney Act" to do the following:

- Establish a durable power of attorney process in the State that generally provides for the authorities, powers, and duties of an agent and principal under a power of attorney and the execution and termination of a power of attorney.**
- Specify the scope of the Act, applying to most powers of attorneys in the State.**
- Entitle an agent to reimbursement of expenses incurred and compensation for services rendered on behalf of a principal unless prohibited in a power of attorney.**
- Allow specified individuals associated with a principal, such as a principal's caregiver or heir, to petition a court to review an agent's conduct under a power of attorney.**
- Prescribe restitution requirements if an agent violated a power of attorney.**
- Provide a model form in statute that could be used to create a power of attorney that had the meaning and effect prescribed by the Act.**
- Specify that the Act would apply to a power of attorney created before, on, or after the Act's effective date, except in certain circumstances.**
- Repeal Sections 5501 to 5505 of EPIC, which generally govern durable powers of attorney in the State.**

House Bill 4645 would amend Section 20101b of the Natural Resources and Environmental Protection Act to replace references to Sections 5501 through 5505 of EPIC with references to the Uniform Power of Attorney Act.

House Bill 4646 would amend the Public Health Code to replace references to Sections 5501 through 5505 of EPIC with references to the Uniform Power of Attorney Act.

House Bill 4644 is described in further detail below.

Definitions

"Agent" would mean a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term would include an original agent, a coagent, a successor agent, and a person to whom an agent's authority is delegated. "Principal" would mean an individual who grants authority to an agent in a power of attorney.

"Power of attorney" would mean a written record that grants authority to an agent to act in one or more matters on behalf of the principal, whether or not the term power of attorney is used. "Record" would mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Person" would mean an individual or corporation, including a fiduciary of an estate or trust, a business trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. "Entity" means a person other than an individual.

"Durable" would mean, with respect to a power of attorney, not terminated by the principal's incapacity. "Incapacity" would mean inability of an individual to manage property or business affairs for either of the following reasons: 1) the individual has an impairment in the ability

to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or 2) the individual is missing, detained, including incarcerated, or outside the United States and unable to return.

"Presented for acceptance", with respect to a power of attorney, would mean that the following events have occurred: 1) a person other than the principal or an agent under the power in question has been asked by the principal or an agent under the power to take a specified action or actions in reliance on the power; 2) the power of attorney itself or a copy of it has been presented to and received by the person that is asked to take action in reliance on the power as described above.

"Presently exercisable", with respect to a power of appointment, would mean that the power of appointment is exercisable by the appointee at the relevant time. A power of appointment that was not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period would be presently exercisable only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. A power that was exercisable only by will would not be presently exercisable.

"Property" would mean anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right in such a thing. "Stocks and bonds" would mean stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. Stocks and bonds would not include commodity futures contracts or call or put options on stocks or stock indexes.

Presence of Power of Attorney

Under the Act, a person would have knowledge of a fact involving a power of attorney if one or more of the following were true:

- The person had actual knowledge of the fact.
- The person had received a notice or notification of the fact.
- From all the facts and circumstances known to the person at the time in question, the person had reason to know the fact.

An entity that conducted activities through one or more employees would have notice or knowledge of a fact involving a power of attorney, a principal, or an agent only from the time the information was received by an employee conducting a transaction or from the time the information would have been brought to the employee's attention if the entity had exercised reasonable diligence. An entity that conducted activities through one or more employees would have actual knowledge of a fact relating to a power of attorney, a principal, or an agent only if the employee conducting the transaction had actual knowledge of the fact.

("Reasonable diligence" would mean the maintenance of and reasonable compliance with reasonable routines for communicating significant information to the employee conducting the transaction. Reasonable diligence does not require an employee of the entity to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter concerning the transaction would be materially affected by the information. "Transaction" would mean a transaction that is conducted for the entity and that involves the power of attorney.)

Act's Scope

The Act would apply to all powers of attorney except the following:

- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.
- A patient advocate designation under the EPIC.
- A delegation of a parent's or guardian's power regarding care, custody, or property of a minor child or ward under EPIC.
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

(Generally, Section 5506 of EPIC allows a mentally sound individual to appoint a person on the same age group as the individual's patient advocate and provides the appointment process. Section 5103 of EPIC allows a parent or guardian to temporarily delegate certain powers regarding care, custody, or property of a minor or legally incapacitated individual to another person for up to 180 days through valid power of attorney.)

Effective and Durable Power of Attorney Under the Act

Under the Act, a power of attorney created on or after the Act's effective date would be durable unless it expressly provided that it was terminated by the incapacity of the principal. A power of attorney created on or after the Act's effective date that was not executed in accordance with the Act would not be durable.

To be effective, a power of attorney created on or after the Act's effective date would have to be signed by the principal or, if signed in the principal's conscious presence, another individual directed by the principal to sign the principal's name.

To be durable, a power of attorney would have to meet one of the following requirements:

- Be acknowledged by the principal before a notary public or other individual authorized to take acknowledgments.
- Be signed in the presence of two witnesses, both of whom also sign the power; a witness could not be an agent nominated in the power, and one of the witnesses could be an individual who also acted as a notary public or other individual authorized to take acknowledgements.

The Act specifies that a signature on a power of attorney would be presumed to be genuine if the principal acknowledged the signature before a notary public or other individual authorized by law to take acknowledgments. A signature on a power of attorney that was witnessed but was not acknowledged by the principal before a notary public or other individual authorized by law to take acknowledgments would not be entitled to the presumption of genuineness and the power would not be acknowledged within the meaning of the Act.

Validity of Power of Attorney

A power of attorney executed in the State would be valid in the State if, when the power was executed, the execution complied with the requirements for the execution of a power of attorney under the law of the State as it existed at that time. A power of attorney that was not executed in the State would be valid in the State if, when the power was executed, the execution complied with either of the following:

- The requirements for the execution of a power of attorney under the law of the jurisdiction that determined the meaning and effect of the power under the Act or under the law of the jurisdiction in which the principal was domiciled at the time of execution.
- The requirements for a military power of attorney under 10 USC 1044b.

(Under 10 USC 1044b, military power of attorney is any general or special power or attorney that is notarized.)

Except as otherwise provided in the power of attorney or by statute other than the Act, a photocopy or electronically transmitted copy of an original power of attorney would have the same effect as the original.

The Act specifies that the meaning and effect of a power of attorney would be determined by the law of the jurisdiction indicated in the power and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power was executed.

Conservator or Guardian and Power of Attorney

Under the Act, in a power of attorney, a principal could nominate a conservator or guardian of the principal's estate or guardian of the principal's person for a protective proceeding if a protective proceeding for the principal's estate or person commenced after the principal executed the power. If consistent with applicable law on priority and suitability, the court would have to make its appointment in accordance with the principal's most recent nomination in a power of attorney.

If, after a principal executed a power of attorney, a court appointed a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all the principal's property, the following would apply:

- The agent would be accountable to the fiduciary as well as to the principal.
- The power of attorney would not be terminated, and the agent's authority would continue unless limited, suspended, or terminated by the court.

Effective Date of a Power of Attorney

A power of attorney would be effective when executed unless the principal provided in the power that it would become effective at a specified future date or on the occurrence of a specified future event or contingency.

If a power of attorney were intended to become effective on the occurrence of a specified future event or contingency, the principal could, in the power, authorize one or more persons to determine in a record that the event or contingency had occurred. If a power of attorney were intended to become effective on the principal's incapacity and the principal had not authorized a person to determine whether the principal was incapacitated, or the person authorized was unable or unwilling to make the determination, the power would become effective on a determination in a record by either of the following:

- A physician or licensed psychologist that the principal was incapacitated.
- An attorney at law, a judge, or an appropriate governmental official that the principal was incapacitated.

A person authorized by the principal in the power of attorney to determine that the principal was incapacitated could, to the extent necessary or convenient in making that determination, act as the principal's personal representative under the Health Insurance Portability and

Accountability Act, the Social Security Act, 42 USC 1320d to 1320d-8 (which concerns the sharing of healthcare information), and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

Termination of Power of Attorney

A power of attorney would terminate if any of the following occurred:

- The principal died.
- For a power of attorney that was not durable, the principal became incapacitated.
- The principal revoked the power of attorney.
- An event occurred that, according to the terms of the power of attorney, terminated the power.
- For a power of attorney that was intended only for a specified, limited purpose, the specified purpose of the power was accomplished.
- The principal revoked the agent's authority or the agent died, became incapacitated, or resigned, and the power of attorney did not provide for another agent to act under the power.

An agent's authority would terminate if any of the following occurred:

- The principal revoked the authority.
- The agent died, became incapacitated, or resigned.
- An action was filed for the dissolution or annulment of the agent's marriage to the principal or for the legal separation of the agent and the principal unless the power of attorney provided otherwise.
- The power of attorney terminated.

Unless the power of attorney provided otherwise, an agent's authority would be exercisable until the authority terminated, notwithstanding any lapse of time since the execution of the power.

Termination of an agent's authority or of a power of attorney would not be effective as to the agent or another person that, without actual knowledge of the termination, acted in good faith under or in reliance upon the power. An act so performed, unless otherwise invalid or unenforceable, would bind the principal and the principal's successors in interest.

Incapacity of the principal of a power of attorney that was not durable would not revoke or terminate the power as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under or in reliance on the power. An act so performed, unless otherwise invalid or unenforceable, would bind the principal and the principal's successors in interest.

The execution of a power of attorney would not revoke a power of attorney previously executed by the principal unless the subsequent power provided that the previous power was revoked or that all other powers of attorney were revoked.

Designation of Coagents

Under the Act, a principal could designate two or more persons to act as coagents. Unless the power of attorney otherwise provided, each coagent could exercise the authority granted in the power independently. A principal could designate one or more successor agents to act if an agent resigned, died, became incapacitated, was not qualified to serve, or declined to serve. A principal could grant authority to designate one or more successor agents to an agent

or other person designated by name, office, or function. Unless the power of attorney otherwise provided, a successor agent would have the same authority as that granted to the original agent and could not act until all of the successor agent's predecessors under the terms of the power of attorney have resigned, died, become incapacitated, were no longer qualified to serve, or had declined to serve.

Except to the extent the power provided that coagents and successor agents were liable for one another's misconduct, an agent under a given power of attorney who did not participate in or conceal a breach of fiduciary duty committed by another agent who was serving under that power, including a predecessor agent under the power, would be liable for the actions of the other agent only as provided below.

An agent serving under a given power of attorney that had knowledge of a breach of or imminent breach of fiduciary duty by another agent who was serving under that power, including a predecessor agent under the power, would have to notify the principal and, if the principal were incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that failed to notify the principal or take action as required by this subsection would be liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action. A provision in a power of attorney that relieved an agent of liability under this provision would be binding on the principal and the principal's successors in interest except to the extent that it relieved the agent of liability for break of duty committed in bad faith or was inserted as a result of an abused of a confidential or fiduciary relationship with the principal.

Agent Entitlement

Under the Act, unless the power of attorney provided otherwise, an agent would be entitled to reimbursement of expenses incurred on behalf of the principal and reasonable compensation for services rendered on behalf of the principal.

Agent Exercising Authority

Except as otherwise provided in the power of attorney, a person would accept appointment as an agent under a power of attorney by exercising authority as an agent or by any other assertion or conduct indicating acceptance.

Before exercising authority under a durable power of attorney, an agent would have to execute an acknowledgment of the agent's duties that contained all the substantive statements contained in the optional template "Agent's Acknowledgment" in substantially the form of the template. An agent's failure to execute the acknowledgement would not affect the agent's authority to act for the principal as provided in the durable power of attorney or this Act, would not alter the agent's duties under the power and this act, and would not mitigate the agent's potential liability for breach of those duties.

Duties of Agent with Power of Attorney

Notwithstanding any provisions to the contrary in the power of attorney, the agent that had accepted appointment would have to do the following:

- Act in accordance with reasonable expectations of the principal that were actually known to the agent and, to the extent the expectations were not actually known, act in the principal's best interest.
- Act in good faith.
- Act only within the scope of authority granted by the principal.

- Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

Unless the power of attorney provided otherwise the agent that accepted the appointment would have to do following:

- Act loyally for the principal's benefit.
- Act so as not to create a conflict of interest that impaired the agent's ability to act impartially in the principal's best interest.
- Act with the care, competence, and diligence that a prudent person would in dealing with the property of another.
- Cooperate with a person that has authority to make health care decisions for the principal to carry out reasonable expectations of the principal concerning health care that were actually known to the agent and, to the extent the expectations were not actually known, to act in the principal's best interest.

Additionally, the agent described above would have to attempt to preserve the principal's estate plan to the extent that plan was actually known to the agent and preserving the plan was consistent with the principal's best interest based on relevant factors including the following:

- The value of the principal's property.
- The principal's foreseeable obligations and need for maintenance.
- The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
- Eligibility for a benefit, a program, or assistance under a statute or regulation.

An agent who acted in good faith would not be liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

An agent who acted for the best interest of the principal with the care, competence, and diligence that a prudent person would in dealing with the property of another would not be liable solely because the agent also benefited from the act or had an individual or conflicting interest in relation to the property or affairs of the principal.

If an agent were selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent had special skills or expertise, the special skills or expertise would have to be considered in determining whether the agent acted with care, competence, and diligence.

A decline in the value of the principal's property would not be in itself sufficient to establish a breach of fiduciary duty. An agent serving under a power of attorney that did not have knowledge of a breach or imminent breach of fiduciary duty by another agent who was serving under that power would not have a duty to investigate the conduct of any coagent or predecessor agent to rule out the possibility of any breach.

An agent who exercised authority to delegate the authority granted by the principal to another person or who engaged another person on behalf of the principal would not be liable for an act, error of judgment, or default of the person if the agent exercised care, competence, and diligence in selecting and monitoring the person.

Unless the power of attorney provided otherwise, an agent would not be required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting

for the principal, or adult protective services, or, on the death of the principal, by the personal representative or successor in interest of the principal's estate. If a person that was authorized to request a made a request, the agent would have to comply with the request within 30 days or provide a record substantiating the reason additional time was needed. If additional time were needed, the agent shall comply with the request within an additional 30 days.

Liability for Breach of Duty

A provision in a power of attorney that relieved an agent of liability for breach of duty would be binding on the principal and the principal's successors in interest except to the extent either of the following applied:

- The provision relieved the agent of liability for breach of duty committed in bad faith or, except as otherwise provided with reckless indifference to the purposes of the power of attorney or the best interest of the principal.
- The provision was inserted because of an abuse of a confidential or fiduciary relationship with the principal.

Petition for Power of Attorney

Any of the following could petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- The principal or the agent.
- A guardian, conservator, or other fiduciary acting for the principal.
- A person that, at the time of the petition, is exercising authority to make health care decisions for the principal.
- An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time.
- A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal the trustee of which has a financial interest in the principal's estate.
- The personal representative of the principal's estate.
- Adult protective services.
- A caregiver or another person that demonstrates sufficient interest in the principal's welfare,
- A person asked to accept the power of attorney.

Upon motion by the principal, the court would have to dismiss the petition unless the court found that the principal lacked capacity to revoke the agent's authority, or power of attorney or the motion was the effect of undue influence, fraud, or duress.

Any of the following could petition a court to review conduct regulated by the Act on the part of a person to whom a power of attorney was presented for acceptant and to grant the appropriate relief:

- The principal or the agent.
- A guardian, conservator, or other court appointed fiduciary acting for the principal.

Violations under the Act

An agent who violated the Act would be liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred, including reimbursement of attorney fees

and costs paid on the agent's behalf in the defense of conduct constituting or contributing to the violation.

If an agent embezzled or wrongfully converted the principal's property, or refused, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successors in interest on demand, the agent would be liable in an action brought by the principal or the principal's successors in interest for treble the value of any property embezzled, converted, or wrongfully withheld from the principal or the principal's successors in interest.

Agent Resignation

Unless the power of attorney provided a different method for an agent's resignation, the agent could resign by notifying the principal if the principal were not incapacitated or, if the principal were incapacitated, by notifying the following persons, as applicable:

- If a conservator or guardian has been appointed for the principal, the conservator or guardian.
- If a coagent or successor agent has been designated, the coagent or successor agent.

If there were not a person described above the agent would have to notify a caregiver of the principal who was reasonably believed by the agent to have a significant interest in the principal's welfare or another person that was reasonably believed by the agent to have the significant interest or adult protective services.

Acceptance of Power of Attorney in Good Faith

A person that accepted an acknowledged power of attorney in good faith without actual knowledge that the signature was not genuine could rely on the presumption that the signature was genuine. "Acknowledged" would mean purportedly verified before a notary public or other individual authorized to take acknowledgments.

A person that accepted a power of attorney in good faith that was either an acknowledged power or a vintage durable power without actual knowledge that the power were void, invalid, or terminated, that the purported agent's authority was void, invalid, or terminated, or that the agent was exceeding the agent's authority could rely on the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. This would apply regardless of whether the purported agent under a durable power has executed an "Agent's Acknowledgement" or any similar requirement under prior law.

"Vintage durable power" would mean a power of attorney to which the following applied:

- The power was valid under the Act.
- The power was durable under the Act.
- The power was executed after September 29, 2012, and before the Act's effective date.

If a power of attorney that was durable were presented for acceptance without an "agent's acknowledgment" and was signed by the agent who was to act on the principal's behalf in the transaction in question, a person that was asked to accept the power could require that the agent provide the acknowledgment before accepting the power.

A person that was asked to accept an acknowledged power of attorney could request and could rely without further investigation on any of the following:

- A certification under penalty of perjury by an agent or an attorney at law who represents either the agent or the principal of any factual matter concerning the principal, agent, or power of attorney.
- An English translation of the power of attorney if the power contains, in whole or in part, language other than English and the translation's accuracy is the subject of either a certification or an opinion of counsel.
- An opinion of counsel as to any matter of law concerning the power of attorney if the person requesting the opinion explains the reason for the request in a record.

Unless the court found the reason for requesting an opinion of counsel frivolous an English translation or an opinion of counsel would have to be provided upon request at the principal's expense unless the request was made more than seven business days after the power of attorney was presented for acceptance.

If a person that was asked to accept an acknowledged power of attorney requested an opinion of counsel and a court found that the reason for the request was frivolous, the person that made the request would be subject to liability for attorney fees and cost incurred in providing the opinion. To decide if the request was frivolous the court would have to consider the relevant factors and whether in light of the language of the power, the provisions of the Act, and the surrounding circumstances, there was arguable merit to the legal concern of the request.

Acceptance of Agent's Acknowledgement

A person would have to accept an acknowledged power of attorney or request an Agent's Acknowledgment or a certification, translation, or opinion of counsel within seven days after the power was presented for acceptance. A person could not require an additional or different form of power of attorney for authority granted in the acknowledged power presented or require an additional or different form of Agent's Acknowledgement that was signed by the agent who was to act on the principal's behalf in the transaction in question was presented with the acknowledge power presented or in response to the request.

If a person requested an Agent's Acknowledgment or a certification, translation, or opinion of counsel, the person would have to accept the power of attorney within five business days after receipt of the requested Agent's Acknowledgment, certification, translation, or opinion of counsel or, if more than one item had been timely requested in response to the same presentation, five business days after the requesting person had received all of the items timely requested.

A person would not have to accept a power of attorney if any of the following applied:

- The person was not required to engage in a transaction with the principal in the same circumstances.
- Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with Federal law or with guidance issued by a Federal regulatory agency to whose jurisdiction the person was subject.
- The person had actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power.
- The person in good faith believed that the power was not valid or that the agent did not have the authority to perform the act requested, whether or not an Agent's Acknowledgment form or a certification, translation, or opinion of counsel concerning the power of attorney had been requested or provided.
- The person in good faith made, or had actual knowledge that another person had made, a report to adult protective services as defined in Section 3 of the Financial Exploitation

Prevention Act, stating a belief that the principal could be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

- The person was a financial institution as defined in Section 3 of the Financial Exploitation Prevention Act, and the person was, at the time in question, delaying or placing a freeze on transactions or assets relative to the principal under the Financial Exploitation Prevention Act.

(Under Section 3 of the Financial Exploitation and Prevention Act, "adult protective services" means the office, division, or unit under the DHHS that is charged with investigation of abuse, neglect, or exploitation of vulnerable persons under the Social Welfare Act. "Financial Institution" means a State or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in the State under the laws of the State or the United States.)

A person that refused to accept an acknowledged power of attorney would be subject to a court order mandating acceptance of the power and liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power or mandates acceptance of the power.

A person that refused to accept an acknowledged power of attorney after having requested and received a certification, a translation, or an opinion of counsel would be subject to, in addition to the reasonable attorney fees and costs described above, liability for reasonable attorney fees and costs incurred in providing the requested certification, translation, or opinion or counsel.

Agent Acting on Behalf of Principal

An agent under a power of attorney could do the following on behalf of the principal or with the principal's property only if the power expressly granted the agent the authority and exercise of the authority was not prohibited by another agreement or instrument to which the authority or property was subject, or the authority was granted by judicial order:

- Create, amend, revoke, or terminate an inter vivos trust.
- Make a gift.
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Delegate authority granted under the power of attorney.
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal had authority to delegate.
- Exercise authority over the content of electronic communications, as defined in 18 USC 2510(12), sent or received by the principal.
- Exercise authority over any bank, securities, or other financial account in a foreign country within the meaning of 31 CFR 1010.350.

(Under 18 USC 2510(12), "electronic communication" means any transfer of signs, signals, writing images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo optical system that affects interstate or foreign commerce. The term does not include any wire or oral communication, any communication through a tone-paging device, any communication from a tracking device, or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.)

(Generally, 31 CFR 1010.350 specifies that each United States person (i.e., citizen, resident, entity) that has a financial interest in or authority over foreign bank accounts must report the relationship annually.)

Other than for a grant of authority described above and unless the power of attorney provided otherwise an agent who was not an ancestor, spouse, or descendant of the principal could not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. The terms of a power of attorney could expand or narrow the class of agents permitted to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property.

Subject to the Act, if a power of attorney granted to an agent authority to do all acts that a principal could do, the agent would have the general authority as incorporated by reference, over real property, tangible personal property, stocks and bonds, commodities and options, banks and financial institutions, an entity or business, insurance and annuities, estates, trusts, and beneficial interests, claims and litigation, personal and family maintenance, governmental benefits, retirement plans, and taxes.

Unless the power of attorney provided otherwise, a grant of authority to make a gift is subject to the provisions described under Gifts.

Subject to the express designation of authority under a power of attorney, if the subjects over which authority was granted by a power of attorney were similar or overlapped, the broadest authority would control.

Authority granted in a power of attorney would be exercisable with respect to property that the principal had when the power was executed or acquired later, whether or not the property was located in the State and whether or not the authority was exercised, or the power was executed in the State.

An act performed by an agent under a power of attorney would have the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Power Incorporated by Reference

An agent would have authority if the power of attorney cited the section in which the authority was described or referred to a heading or catchline added to Sections 204 to 217 of the Act (generally pertaining to areas of authority in a power of attorney) by the Legislative Services Bureau. A power of attorney that incorporated any Section of 204 to 217 of the Legislative Council Act would have to incorporate the entire section as of that section were set out in full in the power. A principal could modify authority incorporated by reference.

Unless otherwise provided in the power of attorney, by executing a power that incorporated a subject described in Sections 204 to 217 of the Legislative Council Act or that granted an agent authority to do all acts that a principal could do a principal would have to authorize the agent, with respect to that subject, to do all the following:

- Demand, receive, and obtain, by litigation or otherwise, money or another thing of value to which the principal was, could become, or claimed to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended.

- Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal.
- Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considered desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim.
- Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney.
- Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor.
- Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation.
- Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal.
- Access communications intended for, and communicate on behalf of, the principal, whether by mail, electronic transmission, telephone, or other means.
- Do any lawful act with respect to the subject and all property related to the subject.

Authority over Real Property

A power of attorney that authorized the agent to convey or otherwise exercise power over real property would not need to contain the real property's legal description. Unless the power of attorney provided otherwise, language in a power granting general authority with respect to real property would authorize the agent to do all following:

- Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.
- Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property.
- Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted.
- Use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in or incident to which the principal has, or claims to have, an interest or right.
- Change the form of title of an interest in or right incident to real property.
- Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Additionally, the agent described above would be authorized to manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all following:

- Insuring against liability or casualty or other loss.
- Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise.
- Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them.
- Purchasing supplies, hiring labor, and making repairs or alterations to the real property.

The Act would specify that an agent described above would be authorized to Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following:

- Selling or otherwise disposing of them.
- Exercising or selling an option, right of conversion, or similar right with respect to them.
- Exercising any voting rights in person or by proxy.

Authority over Tangible Personal Property

Unless the power of attorney provides otherwise, language in a power granting general authority with respect to tangible personal property authorizes the agent to do all of the following:

- Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property.
- Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property.
- Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.
- Change the form of title of an interest in tangible personal property.

Additionally, with respect to tangible personal property, the agent could manage or conserve the property or an interest in the property on behalf of the principal, including all the following:

- Insuring against liability or casualty or other loss.
- Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise.
- Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments.
- Moving the property from place to place.
- Storing the property for hire or on a gratuitous bailment.
- Using and making repairs, alterations, or improvements to the property.

Authority over Stocks and Bonds

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to stocks and bonds would authorize the agent to do all of the following:

- Buy, sell, and exchange stocks and bonds.
- Establish, continue, modify, or terminate an account with respect to stocks and bonds.
- Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Receive certificates and other evidence of ownership with respect to stocks and bonds.
- Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Authority over Commodities and Options

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to commodities and options would authorize the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange. The agent could also Establish, continue, modify, and terminate option accounts.

Authority over Banks and Financial Institutions

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to banks and other financial institutions would authorize the agent to do all following:

- Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.
- Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent.
- Contract for services available from a financial institution, including renting a safe deposit box or space in a vault.
- Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.
- Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.
- Enter a safe deposit box or vault and withdraw or add to the contents.
- Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal.
- Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.
- Receive for the principal and act on a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument.
- Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit.
- Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Authority over Operation of an Entity or Business

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney provided otherwise, language in a power

granting general authority with respect to operation of an entity or business would authorize the agent to do all the following:

- Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.
- Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have.
- Enforce the terms of an ownership agreement.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest.
- Exercise in person or by proxy, or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.
- Put additional capital into an entity or business in which the principal has an interest.
- Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business.
- Sell or liquidate all or part of an entity or business.
- Establish the value of an entity or business under a buy-out agreement to which the principal is a party.
- Prepare, sign, file, and deliver reports, compilations of information, returns, or other records with respect to an entity or business and make related payments.
- Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

With respect to an entity or business owned solely by the principal the agent could continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney. Additionally the agent could change the name or form of organization under which the entity or business is operated or enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business and demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business. The agent could also determine all the following:

- The location of the entity's or business's operation.
- The nature and extent of the business.
- The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the entity's or business's operation.
- The amount and types of insurance carried.
- The mode of engaging, compensating, and dealing with the entities or business's employees and accountants, attorneys, or other advisors.

Authority over Insurance and Annuities

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to insurance and annuities would authorize the agent to do all of the following:

- Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.
- Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.
- Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.
- Apply for and receive a loan secured by a contract of insurance or annuity.
- Surrender and receive the cash surrender value on a contract of insurance or annuity.
- Exercise an election.
- Exercise investment powers available under a contract of insurance or annuity.
- Change the manner of paying premiums on a contract of insurance or annuity.
- Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority over insurance or annuities.
- Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.
- Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.
- Select the form and timing of the payment of proceeds from a contract of insurance or annuity.
- Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Authority over Estates, Trusts, and Beneficial Interests

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to estates, trusts, and other beneficial interests would authorize the agent to do all the following:

- Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest.
- Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise.
- Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.
- Conserve, invest, disburse, or use anything received for an authorized purpose.
- Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

"Estate, trust, or other beneficial interest" would mean trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

Authority over Claims and Litigation

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to claims and litigation would authorize the agent to do all of the following:

- Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief.
- Bring an action to determine adverse claims or intervene or otherwise participate in litigation.
- Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree.
- Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation.
- Submit to alternative dispute resolution, settle, and propose or accept a compromise.
- Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value.
- Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation.
- Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

The agent could also waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

Authority over Personal and Family Maintenance

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to personal and family maintenance would authorize the agent to perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether they were living when the power of attorney was executed or were born later:

- The principal's children.
- Individuals legally entitled to be supported by the principal.
- Individuals whom the principal had customarily supported or indicated the intent to support.

The agent could provide living quarters to the individuals described above by purchase, lease, or contract, or by paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals. The agent could also do the following:

- Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described above.
- Pay expenses for necessary health care and custodial care on behalf of the individuals described above.
- Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described above.
- Maintain credit and debit accounts for the convenience of the individuals described above and open new accounts for that purpose,

Additionally, with respect to personal and family maintenance, the agent would be authorized to do the following:

- Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.
- Act as the principal's personal representative under the Health Insurance Portability and Accountability Act, Public Law 104-191, the Social Security Act, 42 USC 1320d to 1320d-8 (which concerns the sharing of healthcare information), and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.
- Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue an established pattern of contributions to those organizations.

The authority with respect to personal and family maintenance would not be dependent on, or limited by, authority that an agent could or could not have with respect to gifts under the Act.

Authority over Governmental Programs or Civil Military Service

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to benefits from governmental programs or civil or military service would authorize the agent to do all the following:

- Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Authority over Personal and Family Maintenance and for shipment of their household effects.
- Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.
- Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program.
- Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation.

- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation.
- Receive the financial proceeds of a claim for which the principal could be entitled.

"Benefits from governmental programs or civil or military service" would mean any benefit, program, or other assistance provided under statute or regulation including Social Security, Medicare, and Medicaid.

Authority over Retirement Plans

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to retirement plans would authorize the agent to do all the following:

- Select the form and timing of payments under a retirement plan and withdraw benefits from a plan.
- Make a rollover or a trustee-to-trustee transfer of benefits from one retirement plan to another.
- Establish a retirement plan in the principal's name.
- Make contributions to a retirement plan.
- Exercise investment powers available under a retirement plan.
- Borrow from, sell assets to, or purchase assets from a retirement plan as permitted by the plan.

"Retirement plan" would mean a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under any of the following:

- An individual retirement account under Section 408 of the Internal Revenue Code.
- A Roth individual retirement account under Section 408A of the Internal Revenue Code.
- A deemed individual retirement account under Section 408(q) of the Internal Revenue Code.
- An annuity or mutual fund custodial account under Section 403(b) of the Internal Revenue Code
- A pension, profit-sharing, stock bonus, or other retirement plan qualified under Section 401(a) of the Internal Revenue Code.
- A plan under Section 457(b) of the Internal Revenue Code.
- A nonqualified deferred compensation plan under Section 409A of the Internal Revenue Code.

Authority over Taxes

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to taxes would authorize the agent to do all the following:

- Prepare, sign, and file Federal, state, local, and foreign income, gift, payroll, property, Federal insurance contributions, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, and any power of attorney required by the Internal Revenue Service (IRS) or other taxing authority with respect to a tax year upon which the statute of limitations had not run and the following 25 tax years.
- Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the IRS or other taxing authority.

- Exercise any election available to the principal under Federal, state, local, or foreign tax law, including consent to the splitting of 1 or more gifts made by the principal's spouse.
- Act for the principal in all tax matters for all periods before the IRS or other taxing authority.

Authority over Gifts

Unless the power of attorney provided otherwise, language in a power granting general authority with respect to gifts would authorize the agent to make outright gifts of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, to, or for the benefit of, a person or persons as the agent determined was consistent with the principal's objectives if actually known by the agent and, to the extent the principal's objectives were unknown, as the agent determined was consistent with the principal's best interest based on all relevant factors, including the following:

- The value and nature of the principal's property.
- The principal's foreseeable obligations and need for maintenance, including anticipated private-pay nursing or assisted-living care costs incurred in a facility or at home.
- The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
- Eligibility for a benefit, a program, or assistance under a statute or regulation, including eligibility for assistance with nursing or assisted-living care in a facility or at home.
- The principal's personal history of making gifts.

A gift "for the benefit of" a person would include, without limitation, a gift in trust, an account under the Michigan Uniform Transfers to Minors Act, a tuition savings account or prepaid tuition plan as described in the Internal Revenue Code, and an ABLE account as described under Internal Revenue Code.

Forms for Establishing a Power of Attorney

The Act provides a statutory form that could be used to create a power of attorney that had the meaning and effect prescribed by the Act. Generally, the form discusses the provisions of the Act that would govern the authorities, duties, and responsibilities of a principal and agent within a power of attorney. It provides options for a prospective principal to designate the following: 1) an agent and successor agents; 2) the areas of authority upon which an agent could act; 3) limitations on an agent's authority; 4) special instructions for an agent; 5) the effective date of a power of attorney; and 6) the nomination of a conservator or guardian; 7) among other designations.

Miscellaneous Provisions

The Act specifies that consideration should be given to the need to promote uniformity of law with respect to power of attorney under the Act among the states that enacted the Act.

It also specifies that it would modify, limit, and supersede the Federal Electronic Signatures in Global and National Commerce Act, but would not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

(Section 101(c) of the Federal Electronic Signatures in Global and National Commerce Act specifies that information required to be provided in writing may be provided electronically if the consumer consents to the providing of it electronically. Section 103(b) of the Act provides

exceptions to Section 101(c), such as documents required in court proceedings, specified notices of cancellation, and the recall of a product.)

Additionally, the Uniform Power of Attorney Act specifies that on its effective date, all the following would apply:

- Except as provided below, the Act would apply to a power of attorney created before, on, or after the Act's effective date.
- The Act would apply to a judicial proceeding concerning a power of attorney commenced on or after the Act's effective date.
- The Act would apply to a judicial proceeding concerning a power of attorney commenced before the Act's effective date unless the court found that application of a provision of the Act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision would not apply, and the superseded law would.
- An act taken before the Act's effective date would not affect the Act.
- Unless displaced by a provision of the Act, principles of common law and equity would supplement it.
- The Act would not supersede any other law applicable to financial institutions or other regulated entities, and that other law would control to the extent it was inconsistent with the Act.
- The remedies under the Act would not be exclusive and would not abrogate any right or remedy under the law of the State other than the Act.

BACKGROUND

In 1969, the Uniform Law Commission (ULC), which..., developed the Uniform Probate Code, which created a national framework for powers of attorneys. This was followed by the Durable Power of Attorney Act, which sought to address power of attorney that was retained after a principal became incapacitated; however, a later review found that many states had instituted diverging statutory requirements for matters upon which the Act was silent.¹ In response, the ULC, drawing on input from a variety of sources, proposed the Uniform Power of Attorney Act (UPOAA). According to the ULC, the UPOAA standardizes and modernizes state law concerning powers of attorney, providing greater protections against abuse and shielding principals from potential liability. The ULC adds that it also provides principals the "freedom to choose both the extent of an agent's authority and the principles to govern the agent's conduct."² As of October 1, 2023, 30 states and Washington, District of Columbia have enacted the UPOAA or a substantially similar law.

¹ National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act with Prefatory Note and Comments*, p. 1, July 7-14, 2006.

² *Id.*, p. 2.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.