MISSISSIPPI LEGISLATURE REGULAR SESSION 2017

By: Senator(s) Tindell To: Judiciary, Division A

SENATE BILL NO. 2321

AN ACT TO CREATE THE MISSISSIPPI UNIFORM POWER OF ATTORNEY ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE APPLICABILITY OF THIS ACT; TO PROVIDE FOR THE EXECUTION, VALIDITY AND MEANING OF A POWER OF ATTORNEY; TO PROVIDE FOR THE NOMINATION OF CONSERVATORS OR GUARDIANS; TO PROVIDE WHEN A POWER OF ATTORNEY IS EFFECTIVE; TO PROVIDE FOR THE TERMINATION OF A POWER OF ATTORNEY OR AN AGENT'S AUTHORITY; TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF AGENTS; TO PROVIDE FOR THE EXONERATION OF AN AGENT; TO PROVIDE FOR JUDICIAL RELIEF; TO PROVIDE FOR THE RESIGNATION OF AGENTS AND NOTICE THEREOF; TO PROVIDE FOR ACCEPTANCE AND RELIANCE UPON AN ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE LIABILITY FOR REFUSAL TO ACCEPT AN ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE AUTHORITY THAT REQUIRES SPECIFIC GRANT; TO PROVIDE FOR THE INCORPORATION AND CONSTRUCTION OF AUTHORITY; TO PROVIDE FOR THE AUTHORITY OF AN AGENT AND THE USES THEREFOR; TO PROVIDE FORMS FOR A POWER OF ATTORNEY; TO PROVIDE FOR AN AGENT'S CERTIFICATION; TO AMEND SECTION 75-3-307, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL SECTIONS 87-3-101, 87-3-103, 87-3-105, 87-3-107, 87-3-109, 87-3-111 AND 87-3-113, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE UNIFORM DURABLE POWER OF ATTORNEY ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Chapter 4 of Title 87, Mississippi Code of 1972:

ARTICLE 1

SECTION 2. The following shall be codified as Section 87-4-101, Mississippi Code of 1972:

87-4-101. **Short title.** This act may be cited as the Mississippi Uniform Power of Attorney Act.

SECTION 3. The following shall be codified as Section 87-4-102, Mississippi Code of 1972:

87-4-102. **Definitions.** In this act:

(1) "Agent" means 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 includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated. The term does not include a trustee and does not include an authorized signer on a deposit account.

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

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

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

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

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

(B) Is:

(i) Missing;

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

(iii) Outside the United States and unable to return.

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

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used. Specifically excluded from the definition of power of attorney is a health care power of attorney, a trust, and a writing or record granting the authority to be an authorized signer on a deposit account or bank account.

(8) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the

specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

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

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

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

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

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

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

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

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

SECTION 4. The following shall be codified as Section 87-4-103, Mississippi Code of 1972:

87-4-103. **Applicability.** This act applies to all powers of attorney except:

(1) 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;

(2) A power to make health care decisions;

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

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

(5) A power, delegation or grant of authority under a trust or will;

(6) A power, delegation or grant of authority under a court order to a conservator, guardian, executor, executrix, administrator, administratrix, or other court-appointed fiduciary; and

(7) A power, delegation, or grant of authority under a writing or record to an authorized signer on a deposit account.

SECTION 5. The following shall be codified as Section 87-4-104, Mississippi Code of 1972:

87-4-104. **Power of attorney is durable.** A power of attorney created under this act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

SECTION 6. The following shall be codified as Section 87-4-105, Mississippi Code of 1972:

87-4-105. **Execution of power of attorney.** A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

SECTION 7. The following shall be codified as Section 87-4-106, Mississippi Code of 1972:

87-4-106. **Validity of power of attorney.** (a) A power of attorney executed in this state on or after July 1, 2017, is valid if its execution complies with Section 87-4-105.

(b) A power of attorney executed in this state before July 1, 2017, is valid if its execution complied with the law of this state as it existed at the time of execution.

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

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section 87-4-107; or

(2) The requirements for a military power of attorney pursuant to 10 USCS Section 1044b.

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

SECTION 8. The following shall be codified as Section 87-4-107, Mississippi Code of 1972:

87-4-107. **Meaning and effect of power of attorney.** The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

SECTION 9. The following shall be codified as Section 87-4-108, Mississippi Code of 1972:

87-4-108. **Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.** (a) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in

accordance with the principal's most recent nomination. If the power of attorney names a conservator or a guardian but does not specify whether the nomination applies to the principal's estate or to the principal's person, the nomination applies to both the principal's estate and the principal's person.

(b) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court, in which case the limitation, suspension, or termination is not effective as to a person that accepts an acknowledged power of attorney until the person that accepts an acknowledged power of attorney has actual knowledge of the appointment of a conservator, guardian, or other fiduciary and has a reasonable time to act on the knowledge.

SECTION 10. The following shall be codified as Section 87-4-109, Mississippi Code of 1972:

87-4-109. **When power of attorney is effective.** (a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

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

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

(1) A physician or licensed psychologist that the principal is incapacitated within the meaning of Section 87-4-102(5)(A); or

(2) An attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Section 87-4-102(5)(B).

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 USCS Section 1320d and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

SECTION 11. The following shall be codified as Section 87-4-110, Mississippi Code of 1972:

87-4-110. **Termination of power of attorney or agent's authority.** (a) A power of attorney terminates when:

(1) The principal dies;

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

(3) The principal revokes the power of attorney;

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

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

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

(b) An agent's authority terminates when:

(1) The principal revokes the authority;

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

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

(4) The power of attorney terminates.

(c) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates

under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. A person that accepts an acknowledged power of attorney may continue to act on a power of attorney or at an agent's direction until that person that accepts an acknowledged power of attorney has actual knowledge of the termination of the power of attorney or of the agent's authority and has had a reasonable time to act on that knowledge.

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

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

revoke the previous power of attorney, the previous power of attorney remains in full force and effect.

SECTION 12. The following shall be codified as Section 87-4-111, Mississippi Code of 1972:

87-4-111. **Coagents and successor agents.** (a) A principal may designate two (2) or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently. If a power of attorney requires that two (2) or more people act together as coagents, one or more of the agents may delegate to a coagent the authority to conduct lawful banking transactions, and a person that accepts an acknowledged power of attorney may rely upon the delegation to conduct banking transactions and will not be liable.

(b) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may 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 provides, a successor agent:

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

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

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

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

SECTION 13. The following shall be codified as Section 87-4-112, Mississippi Code of 1972:

87-4-112. **Reimbursement and compensation of agent.** Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

SECTION 14. The following shall be codified as Section 87-4-113, Mississippi Code of 1972:

87-4-113. **Agent's acceptance.** Except as otherwise provided in the power of attorney, a person accepts appointment as an agent

under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

SECTION 15. The following shall be codified as Section 87-4-114, Mississippi Code of 1972:

87-4-114. **Agent's duties.** (a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

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

(2) Act in good faith; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual

or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is 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 has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

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

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

(h) Except as otherwise provided in the power of attorney, an agent is not 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, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty (30) days the agent shall comply

with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty (30) days.

SECTION 16. The following shall be codified as Section 87-4-115, Mississippi Code of 1972:

87-4-115. **Exoneration of agent.** A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed dishonestly or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

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

SECTION 17. The following shall be codified as Section 87-4-116, Mississippi Code of 1972:

87-4-116. **Judicial relief.** (a) The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

(1) The principal or the agent;

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

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

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

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

(6) 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 that has a financial interest in the principal's estate;

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

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

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

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

SECTION 18. The following shall be codified as Section 87-4-117, Mississippi Code of 1972:

87-4-117. **Agent's liability.** An agent that violates this act is liable to the principal or the principal's successors in interest for the amount required to:

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

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

SECTION 19. The following shall be codified as Section 87-4-118, Mississippi Code of 1972:

87-4-118. **Agent's resignation; notice.** Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

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

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

(A) The principal's caregiver;

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

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

SECTION 20. The following shall be codified as Section 87-4-119, Mississippi Code of 1972:

87-4-119. **Acceptance of and reliance upon acknowledged power of attorney.** (a) For purposes of this section and Section 87-4-120, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(b) A person that accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under Section 87-4-105 that the signature is genuine.

(c) A person that accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney 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. A person that accepts an acknowledged power of attorney shall be fully exonerated from all liability to the principal and any other person for any and all actions taken or omitted at the request, order or instruction of an agent under the power of attorney without actual knowledge that (1) the power of attorney is void, invalid or terminated, (2) the purported agents' authority is void, invalid or terminated, or (3) the agent is exceeding the agents' authority.

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

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

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

(3) An opinion of counsel, who is approved by the person, as to any matter of law concerning the power of attorney, if the person making the request provides in a writing or other record the reason for the request.

(e) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than seven (7) business days after the power of attorney is presented for acceptance.

(f) For purposes of this section and Section 87-4-120, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

SECTION 21. The following shall be codified as Section 87-4-120, Mississippi Code of 1972:

87-4-120. **Liability for refusal to accept acknowledged power of attorney.** (a) Except as otherwise provided in subsection (b):

(1) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under Section 87-4-119(d) no later than seven (7) business days after presentation of the power of attorney for acceptance;

(2) If a person requests a certification, a translation, or an opinion of counsel under Section 87-4-119(d), the person shall accept the power of attorney no later than five (5) business days after receipt of the certification, translation, or opinion of counsel; and

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

(b) A person is not required to accept an acknowledged power of attorney if:

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

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

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

(4) A request for a certification, a translation, or an opinion of counsel under Section 87-4-119(d) is refused or the

certification, translation, or opinion of counsel does not support acceptance of the power of attorney for the transaction or purpose for which it was presented;

(5) The person has a reasonable basis to believe that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Section 119(d) has been requested or provided;

(6) The person makes, or has actual knowledge that another person has made, a report under the Mississippi Vulnerable Persons Act or a report to the Department of Human Services or to law enforcement stating a good-faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(7) The agent or agents refuse a request for indemnification for the acts or omissions of the agent or agents; or

(c) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to a court order mandating acceptance of the power of attorney. In any such action or proceeding, the prevailing party shall be entitled to recovery of reasonable attorney's fees and costs, and expenses incurred.

(d) For purposes of this section and Section 87-4-119, each transaction requested, conducted or attempted to be conducted by the agent shall be deemed to be a separate presentation of the power of attorney for acceptance.

SECTION 22. The following shall be codified as Section 87-4-121, Mississippi Code of 1972:

87-4-121. **Principles of law and equity.** Unless displaced by a provision of this act, the principles of law and equity supplement this act.

SECTION 23. The following shall be codified as Section 87-4-122, Mississippi Code of 1972:

87-4-122. **Laws applicable to financial institutions and entities.** Except as expressly provided in this act, this act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this act.

SECTION 24. The following shall be codified as Section 87-4-123, Mississippi Code of 1972:

87-4-123. **Remedies under other law.** Except as expressly provided in this act, the remedies under this act are not exclusive and do not abrogate any right or remedy under the law of this state other than this act.

SECTION 25. The following shall be codified as Section 87-4-124, Mississippi Code of 1972:

87-4-124. The exoneration from liability provided to a person under Section 87-4-119(c) expressly overrides Section 75-3-307. To the extent of any conflict between this act and Section 75-3-307, this act prevails, it being the intent of this act to exonerate from liability any person for actions taken or omitted at the request, instruction or order of an agent under a power of attorney without actual knowledge that: (a) the power of attorney is void, invalid, or terminated; (b) the purported agent's authority is void, invalid, or terminated; or (c) the agent is exceeding the authority granted.

ARTICLE 2

AUTHORITY

SECTION 26. The following shall be codified as Section 87-4-201, Mississippi Code of 1972:

87-4-201. **Authority that requires specific grant; grant of general authority.** (a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

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

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

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

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

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

(8) Disclaim property, including a power of appointment; or

(9) Make the agent an owner or joint owner of a deposit account.

(b) Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may 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.

(c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in Sections 87-4-204 through 87-4-216.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to Section 87-4-217.

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

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

(g) An act performed by an agent pursuant to a power of attorney has 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.

SECTION 27. The following shall be codified as Section 87-4-202, Mississippi Code of 1972:

87-4-202. **Incorporation of authority.** (a) An agent has authority described in this act if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Sections 87-4-204 through 87-4-217 or cites the section in which the authority is described.

(b) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in Sections 87-4-204 through 87-4-217 or a citation to a section of Sections

87-4-204 through 87-4-217 incorporates the entire section as if it were set out in full in the power of attorney.

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

SECTION 28. The following shall be codified as Section 87-4-203, Mississippi Code of 1972:

87-4-203. **Construction of authority generally.** Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in Sections 87-4-204 through 87-4-217 or that grants to an agent authority to do all acts that a principal could do pursuant to Section 87-4-201(c), a principal authorizes the agent, with respect to that subject, to:

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

(2) 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;

(3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers

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;

(4) 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;

(5) 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;

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

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

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

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

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

SECTION 29. The following shall be codified as Section 87-4-204, Mississippi Code of 1972:

87-4-204. **Real property.** (a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) 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;

(2) 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;

(3) 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;

(4) 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 which exists or is asserted;

(5) 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:

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

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

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

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

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

(7) 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, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) Selling or otherwise disposing of them;

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

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

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

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

(b) A power of attorney used by an agent on behalf of a principal concerning a conveyance, transaction, or any matter involving real property, including a contract relating to real property, shall be recorded in the land records, or other permanent records for the recordation of powers of attorney, of the chancery clerk of the county in which the real property is located.

SECTION 30. The following shall be codified as Section 87-4-205, Mississippi Code of 1972:

87-4-205. **Tangible personal property.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) 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;

(2) 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;

(3) 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;

(4) 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;

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

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

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

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

(D) Moving the property from place to place;

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

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

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

SECTION 31. The following shall be codified as Section 87-4-206, Mississippi Code of 1972:

87-4-206. **Stocks and bonds.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

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

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

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

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

(5) 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.

SECTION 32. The following shall be codified as Section 87-4-207, Mississippi Code of 1972:

87-4-207. **Commodities and options.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) 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; and

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

SECTION 33. The following shall be codified as Section 87-4-208, Mississippi Code of 1972:

87-4-208. **Banks and other financial institutions.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

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

(2) 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;

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

(4) 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;

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

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

(7) 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;

(8) 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;

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

(10) 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; and

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

SECTION 34. The following shall be codified as Section 87-4-209, Mississippi Code of 1972:

87-4-209. **Operation of 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 otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

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

(2) 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;

(3) Enforce the terms of an ownership agreement;

(4) 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;

(5) 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;

(6) 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;

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

(A) 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;

(B) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

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

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

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

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

(D) 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;

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

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

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

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

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

(13) 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.

SECTION 35. The following shall be codified as Section 87-4-210, Mississippi Code of 1972:

87-4-210. **Insurance and annuities.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) 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 which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) 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;

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

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

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

(6) Exercise an election;

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

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

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

(10) 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;

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

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

(13) 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.

SECTION 36. The following shall be codified as Section 87-4-211, Mississippi Code of 1972:

87-4-211. **Estates, trusts, and other beneficial interests.** (a) In this section, "estate, trust, or other beneficial interest" means a 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.

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

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

(2) 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;

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

(4) 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;

(5) 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;

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

(7) 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; and

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

SECTION 37. The following shall be codified as Section 87-4-212, Mississippi Code of 1972:

87-4-212. **Claims and litigation.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) 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;

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

(3) 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;

(4) 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;

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

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which 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;

(7) 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 which affects an interest of the principal in property or other thing of value;

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

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

SECTION 38. The following shall be codified as Section 87-4-213, Mississippi Code of 1972:

87-4-213. **Personal and family maintenance.** (a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

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

(A) The principal's children;

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

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

(2) 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;

(3) Provide living quarters for the individuals described in paragraph (1) by:

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

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

(4) 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 in paragraph (1);

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

(6) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 USCS Section 1320d, 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;

(7) 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 in paragraph (1);

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

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

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

SECTION 39. The following shall be codified as Section 87-4-214, Mississippi Code of 1972:

87-4-214. **Benefits from governmental programs or civil or military service.** (a) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation including social security, Medicare, and Medicaid.

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

(1) 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 Section 87-4-213(a)(1), and for shipment of their household effects;

(2) 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;

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

(4) 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;

(5) 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; and

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

SECTION 40. The following shall be codified as Section 87-4-215, Mississippi Code of 1972:

87-4-215. **Retirement plans.** (a) In this section, "retirement plan" means 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 the following sections of the Internal Revenue Code:

(1) An individual retirement account under Internal Revenue Code Section 408, 26 USCS Section 408;

(2) A Roth individual retirement account under Internal Revenue Code Section 408A, 26 USCS Section 408A;

(3) A deemed individual retirement account under Internal Revenue Code Section 408(q), 26 USCS Section 408(q);

(4) An annuity or mutual fund custodial account under Internal Revenue Code Section 403(b), 26 USCS Section 403(b);

(5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code Section 401(a), 26 USCS Section 401(a);

(6) A plan under Internal Revenue Code Section 457(b), 26 USCS Section 457(b); and

(7) A nonqualified deferred compensation plan under Internal Revenue Code Section 409A, 26 USCS Section 409A.

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

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

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

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

(4) Make contributions to a retirement plan;

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

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

SECTION 41. The following shall be codified as Section 87-4-216, Mississippi Code of 1972:

87-4-216. **Taxes.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code Section 2032A, 26 USCS Section 2032A, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five (25) tax years;

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

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

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

SECTION 42. The following shall be codified as Section 87-4-217, Mississippi Code of 1972:

87-4-217. **Gifts.** (a) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account

or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 USCS Section 529.

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

(1) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 USCS Section 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, 26 USCS 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(2) Consent, pursuant to Internal Revenue Code Section 2513, 26 USCS Section 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

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

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

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

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

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

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

SECTION 43. The following shall be codified as Section 87-4-218, Mississippi Code of 1972:

87-4-218. **Attorney identification.** An attorney-at-law who drafts a power of attorney for another person must list the attorney's name, address, phone number and bar number at the bottom of the power of attorney.

SECTION 44. The following shall be codified as Section 87-4-219, Mississippi Code of 1972:

87-4-219. **Homestead.** A power of attorney used by an agent to convey, mortgage, deed, or otherwise pledge or encumber a homestead shall comply with Section 89-1-29 and shall designate an agent other than the spouse of the principal.

ARTICLE 3

STATUTORY FORMS

SECTION 45. The following shall be codified as Section 87-4-301, Mississippi Code of 1972:

87-4-301. **Statutory form power of attorney.** A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this act.

MISSISSIPPI STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Mississippi Uniform Power of Attorney Act (Section 87-4-101 et seq., Mississippi Code of 1972).

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

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

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

This form provides for designation of one (1) agent. If you wish to name more than one (1) agent you may name a coagent in the

Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

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

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

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

DESIGNATION OF AGENT

I _____

name the following _____

(Name of Principal)

person as my agent:

Name of Agent:

_____

Agent's Address:

_____

Agent's Telephone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent:

_____

Successor Agent's Address:

_____

Successor Agent's Telephone Number:

_____

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

_____

Name of Second Successor Agent:

_____

Second Successor Agent's Address:

_____

Second Successor Agent's Telephone Number:

_____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Mississippi Uniform Power of Attorney Act (Section 87-4-101 et seq., Mississippi Code of 1972):

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

(___) Real Property

(___) Tangible Personal Property

(___) Stocks and Bonds

(___) Commodities and Options

(___) Banks and Other Financial Institutions

(___) Operation of Entity or Business

(___) Insurance and Annuities

(___) Estates, Trusts, and Other Beneficial Interests

(___) Claims and Litigation

(___) Personal and Family Maintenance

(___) Benefits from Governmental Programs or Civil or Military Service

(___) Retirement Plans

(___) Taxes

(___) All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

(___) Create, amend, revoke, or terminate an inter vivos trust

(___) Make a gift, subject to the limitations of the Mississippi Uniform Power of Attorney Act (Section 87-4-217, Mississippi Code of 1972) and any special instructions in this power of attorney

(___) Create or change rights of survivorship

(___) Create or change a beneficiary designation

(___) Authorize another person to exercise the authority granted under this 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 has authority to delegate

(___) Disclaim or refuse an interest in property, including a power of appointment

(___) Make the agent an owner or joint owner of a deposit account.

LIMITATION ON AGENT'S AUTHORITY

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

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

_____

_____

_____

_____

_____

_____

_____

_____

EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

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

Name of Nominee for conservator or guardian of my estate:

_____

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for conservator or guardian of my person:

_____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

_____

Your Signature

_____

Date

_____

Your Name Printed

_____

_____

Your Address

_____

Your Telephone Number

State of _____

County of _____

This document was acknowledged before me on _____(Date)

by_____.

(Name of Principal)

_____(Seal, if any)

_____

Signature of Notary

My commission expires: _____

This document prepared by: _____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

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

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

(2) Act in good faith;

(3) Do nothing beyond the authority granted in this power of attorney; and

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

_____

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

Unless the special instructions in this power of attorney state otherwise, you must also:

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

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

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

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

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

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

Termination of Agent's Authority

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

(1) Death of the principal;

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

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

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

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

Liability of Agent

The meaning of the authority granted to you is defined in the Mississippi Uniform Power of Attorney Act. If you violate the Mississippi Uniform Power of Attorney Act or act outside the

authority granted, you may be liable for any damages caused by your violation.

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

SECTION 46. The following shall be codified as Section 87-4-302, Mississippi Code of 1972:

87-4-302. **Agent's certification.** The following optional form may be used by an agent to certify facts concerning a power of attorney.

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

State of _____

County of _____

I, _____ (Name of Agent), certify under penalty of perjury that _____ _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

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

(4) I am an adult and not under any incapacity;

(5) The principal was an adult and competent when the power of attorney was executed; and

SIGNATURE AND ACKNOWLEDGMENT

_____

Agent's Signature Date

_____

Agent's Name Printed

_____

_____

Agent's Address

_____

Agent's Telephone Number _____

This document was acknowledged before me on _____(Date)

by _____.

(Name of Agent)

_____ (Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by _____

ARTICLE 4

MISCELLANEOUS PROVISIONS

SECTION 47. The following shall be codified as Section 87-4-401, Mississippi Code of 1972:

87-4-401. **Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 48. The following shall be codified as Section 87-4-402, Mississippi Code of 1972:

87-4-402. **Relation to Electronic Signatures in Global and National Commerce Act.** This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SECTION 49. The following shall be codified as Section 87-4-403, Mississippi Code of 1972:

87-4-403. **Effect of existing powers of attorney.** Except as otherwise provided in this act:

(1) This act applies to a power of attorney created before, on, or after July 1, 2017;

(2) This act applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2017;

(3) This act applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2017, unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) An act done before July 1, 2017, is not affected by this act.

SECTION 50. Section 75-3-307, Mississippi Code of 1972, is amended as follows:

75-3-307. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(5) To the extent that this section conflicts with Section 87-4-119(c), Section 87-4-119(c) controls.

SECTION 51. Sections 87-3-101, 87-3-103, 87-3-105, 87-3-107, 87-3-109, 87-3-111 and 87-3-113, Mississippi Code of 1972, which constitute the Uniform Durable Power of Attorney Act, are repealed.

SECTION 52. This act shall take effect and be in force from and after July 1, 2017.