

HOUSE BILL No. 2034

AN ACT concerning the Kansas power of attorney act; amending K.S.A. 2002 Supp. 58a-602 and repealing the existing section; also repealing K.S.A. 58-601, 58-602, 58-610, 58-611, 58-612, 58-613, 58-614, 58-615, 58-616 and 58-617.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 16, and amendments thereto, shall be known and may be cited as the Kansas power of attorney act.

New Sec. 2. As used in the Kansas power of attorney act:

(a) "Attorney in fact" means an individual, corporation or other legal entity appointed to act as agent of a principal in a written power of attorney.

(b) "Court" means the district court.

(c) "Disabled" means a person who is wholly or partially disabled as defined in K.S.A. 77-201, and amendments thereto, or a similar law of the place having jurisdiction of the person whose capacity is in question.

(d) "Durable power of attorney" means a written power of attorney in which the authority of the attorney in fact does not terminate in the event the principal becomes disabled or in the event of later uncertainty as to whether the principal is dead or alive and which complies with subsection (a) of section 3, and amendments thereto, or is durable under the laws of any of the following places:

(1) The law of the place where executed;

(2) the law of the place of the residence of the principal when executed; or

(3) the law of a place designated in the written power of attorney if that place has a reasonable relationship to the purpose of the instrument.

(e) "Legal representative" means a decedent's personal representative, a guardian or a conservator.

(f) "Nondurable power of attorney" means a written power of attorney which does not meet the requirements of a durable power of attorney.

(g) "Person" means an adult individual, corporation or other legal entity.

(h) "Personal representative" means a legal representative as defined in K.S.A. 59-102, and amendments thereto.

(i) "Power of attorney" means a written power of attorney, either durable or nondurable.

(j) "Principal's family" means the principal's parent, grandparent, uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and their descendants, whether of the whole blood or the half blood, or by adoption, and the principal's spouse, stepparent and stepchild.

(k) "Third person" means any individual, corporation or legal entity that acts on a request from, contracts with, relies on or otherwise deals with an attorney in fact pursuant to authority granted by a principal in a power of attorney and includes a partnership, either general or limited, governmental agency, financial institution, issuer of securities, transfer agent, securities or commodities broker, real estate broker, title insurance company, insurance company, benefit plan, legal representative, custodian or trustee.

New Sec. 3. (a) The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in the event the principal becomes wholly or partially disabled or in the event of later uncertainty as to whether the principal is dead or alive if:

(1) The power of attorney is denominated a "durable power of attorney;"

(2) the power of attorney includes a provision that states in substance one of the following:

(A) "This is a durable power of attorney and the authority of my attorney in fact shall not terminate if I become disabled or in the event of later uncertainty as to whether I am dead or alive"; or

(B) "This is a durable power of attorney and the authority of my attorney in fact, when effective, shall not terminate or be void or voidable if I am or become disabled or in the event of later uncertainty as to whether I am dead or alive"; and

(3) the power of attorney is signed by the principal, and dated and acknowledged in the manner prescribed by K.S.A. 53-501 *et seq.*, and amendments thereto.

(b) All acts done by an attorney in fact pursuant to a durable power of attorney shall inure to the benefit of and bind the principal and the

principal's successors in interest, notwithstanding any disability of the principal.

(c) (1) A power of attorney does not have to be recorded to be valid and binding between the principal and attorney in fact or between the principal and third persons.

(2) A power of attorney may be recorded in the same manner as a conveyance of land is recorded. A certified copy of a recorded power of attorney may be admitted into evidence.

(3) If a power of attorney is recorded any revocation of that power of attorney must be recorded in the same manner for the revocation to be effective. If a power of attorney is not recorded it may be revoked by a recorded revocation or in any other appropriate manner.

(4) If a power of attorney requires notice of revocation be given to named persons, those persons may continue to rely on the authority set forth in the power of attorney until such notice is received.

(d) A person who is appointed an attorney in fact under a durable power of attorney has no duty to exercise the authority conferred in the power of attorney, unless the attorney in fact has agreed expressly in writing to act for the principal in such circumstances. An agreement to act on behalf of the principal is enforceable against the attorney in fact as a fiduciary without regard to whether there is any consideration to support a contractual obligation to do so. Acting for the principal in one or more transactions does not obligate an attorney in fact to act for the principal in subsequent transactions.

(e) The grant of power or authority conferred by a power of attorney in which any principal shall vest any power or authority in an attorney in fact, if such writing expressly so provides, shall be effective only upon: (1) A specified future date; (2) the occurrence of a specified future event; or (3) the existence of a specified condition which may occur in the future. In the absence of actual knowledge to the contrary, any person to whom such writing is presented shall be entitled to rely on an affidavit, executed by the attorney in fact, setting forth that such event has occurred or condition exists.

New Sec. 4. (a) A principal may appoint more than one attorney in fact in one or more powers of attorney and may provide that the authority conferred on two or more attorneys in fact shall or may be exercised either jointly or severally or in a manner, with such priority and with respect to such subjects as is provided in the power of attorney. In the absence of specification in a power of attorney, the attorneys in fact must act jointly.

(b) The designation of a person not qualified to act as an attorney in fact for a principal under a power of attorney subjects the person to removal as attorney in fact but does not affect the immunities of third persons nor relieve the unqualified person of any duties or responsibilities to the principal or the principal's successors.

New Sec. 5. (a) A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or nondurable.

(b) If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g). When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney.

(c) If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the

attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g).

(d) Except as provided in subsections (f) and (g), an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to the principal's own person or property, including property owned jointly or by the entireties with another or others, as a nondisabled adult. Without limiting the foregoing an attorney in fact with general powers has, with respect to the subject or purposes of the power, complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact. Such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

(e) An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with sections 6 and 7, and amendments thereto.

(f) Any power of attorney, whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection only if the actions are expressly enumerated and authorized in the power of attorney. Any power of attorney may grant power or authority to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

- (1) To execute, amend or revoke any trust agreement;
- (2) to fund with the principal's assets any trust not created by the principal;
- (3) to make or revoke a gift of the principal's property in trust or otherwise;
- (4) to disclaim a gift or devise of property to or for the benefit of the principal;

(5) to create or change survivorship interests in the principal's property or in property in which the principal may have an interest. The inclusion of the authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled and seeking to act in the principal's own behalf;

(6) to designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;

(7) to give or withhold consent to an autopsy or postmortem examination;

(8) to make a gift of, or decline to make a gift of, the principal's body parts under the uniform anatomical gift act, K.S.A. 65-3209 through 65-3217, and amendments thereto;

(9) to nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate such attorney in fact's self as such;

(10) to alienate the homestead without the joint consent of husband and wife when that relationship exists, if the power of attorney specifically: Gives the attorney in fact the power to sell, transfer and convey the homestead in question; gives the legal description and street address of the property; and states that by the execution of the power of attorney it is the intention of the parties that the act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution and the power of attorney is executed by both the husband and wife in the same instrument;

(11) to designate one or more substitute or successor or additional attorneys in fact; or

(12) to delegate any or all powers granted in a power of attorney pursuant to subsection (a) of section 11, and amendments thereto.

(g) No power of attorney, whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

(1) To make, publish, declare, amend or revoke a will for the principal;

(2) to make, execute, modify or revoke a declaration under K.S.A. 65-28,101 *et seq.*, and amendments thereto, for the principal or to make, execute, modify or revoke a do not resuscitate directive under K.S.A. 65-4941, and amendments thereto, for the principal or to make, execute, modify or revoke a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, *et seq.*, and amendments thereto, for the principal;

(3) to require the principal, against the principal's will, to take any action or to refrain from taking any action; or

(4) to carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

(h) A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

(i) It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerate some express subjects or purposes, with respect to those subjects or purposes, as if the principal was personally present and acting or seeking to act; and any provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

(j) Sections 1 through 16, and amendments thereto, shall not be con-

strued to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal. Any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

New Sec. 6. (a) An attorney in fact acting for the principal under a power of attorney shall clearly indicate the attorney in fact's capacity and shall keep the principal's property and accounts separate and distinct from all other property and accounts in a manner to identify the property and accounts clearly as belonging to the principal.

(b) An attorney in fact holding property for a principal complies with subsection (a) if the property is held in the name of the principal, in the name of the attorney in fact as attorney in fact for the principal or in the name of the attorney in fact as personal custodian for the principal under the uniform custodial trust law or similar law of any state.

New Sec. 7. (a) An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries. In the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after July 1, 2003, shall be in accordance with the provisions of the Kansas uniform prudent investor act, K.S.A. 58-24a01 *et seq.*, and amendments thereto. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

(b) On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

(c) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not an adult with an impairment in need of a guardian or conservator or both as defined by subsection (a) of K.S.A. 59-3051, and amendments thereto.

(d) A principal may nominate by a power of attorney, a guardian or conservator, or both, for consideration by the court. If a petition to appoint a guardian or conservator, or both, is filed, the court shall make the appointment in accordance with the principal's most recent nomination in the power of attorney, so long as the individual nominated is a fit and proper person.

(e) An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the

principal, or the written instructions of the principal's legal representative or a court.

(f) An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

(g) On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors. The attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors, any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

(h) If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that would conflict or be inconsistent with that interest.

New Sec. 8. (a) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

(1) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

(2) when the principal, orally or in writing, or the principal's legal representative in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated; or

(3) when a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the register of deeds in the county of the principal's residence or, if the principal is a nonresident of the state, in the county of the residence of the attorney in fact last known to the principal, or in the county in which is located any property specifically referred to in the power of attorney.

(b) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be terminated as follows:

(1) On the death of the principal, except that if the power of attorney grants authority under subsection (f)(7) or (f)(8) of section 5, and amendments thereto, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of such subsections for a reasonable length of time after the death of the principal;

(2) when the attorney in fact under a power of attorney is not qualified to act for the principal; or

(3) on the filing of any action for annulment, separate maintenance or divorce of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

(c) The authority of an attorney in fact, under a power of attorney that is nondurable, is suspended during any period that the principal is disabled to the extent that the principal is unable to receive or evaluate information or to communicate decisions with respect to the subject of the power of attorney. An attorney in fact exercising authority under a power of attorney that is nondurable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled.

(d) Whenever any of the events described in subsection (a) operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact

may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in fact whose power and authority was terminated under any of the circumstances referred to in subsection (a).

(e) As between the principal and attorney in fact or successor, acts and transactions of the attorney in fact or successor undertaken in good faith, in accordance with section 7, and amendments thereto, and without actual knowledge of the death of the principal or without actual knowledge, or constructive knowledge pursuant to subsection (a)(3), that the authority granted in the power of attorney has been suspended, modified or terminated, relieves the attorney in fact or successor from liability to the principal and the principal's successors in interest.

(f) This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of this act, with the exception of those acts enumerated in subsection (g) of section 5, and amendments thereto.

(g) As between the principal and any attorney in fact or successor, if the attorney in fact or successor undertakes to act, and if in respect to such act, the attorney in fact or successor acts in bad faith, fraudulently or otherwise dishonestly, or if the attorney in fact or successor intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney fees, and punitive damages as allowed by law.

New Sec. 9. (a) A third person, who is acting in good faith, without liability to the principal or the principal's successors in interest, may rely and act on any power of attorney executed by the principal. A third person, with respect to the subjects and purposes encompassed by or separately expressed in the power of attorney, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact and, in the absence of actual knowledge, as defined in subsection (c), is not responsible for determining and has no duty to inquire as to any of the following:

(1) The authenticity of a copy of a power of attorney furnished by the principal's attorney in fact or successor;

(2) the validity of the designation of the attorney in fact or successor;

(3) whether the attorney in fact or successor is qualified to act as an attorney in fact for the principal;

(4) the propriety of any act of the attorney in fact or successor in the principal's behalf, including, but not limited to, whether or not an act taken or proposed to be taken by the attorney in fact, constitutes a breach of any duty or obligation owed to the principal, including, but not limited to, the obligation to the principal not to modify or alter the principal's estate plan or other provisions for distributions of assets at death, as provided in subsection (a) of section 7, and amendments thereto;

(5) whether any future event, condition or contingency making effective or terminating the authority conferred in a power of attorney has occurred;

(6) whether the principal is disabled or has been adjudicated disabled;

(7) whether the principal, the principal's legal representative or a court has given the attorney in fact any instructions or the content of any instructions, or whether the attorney in fact is following any instructions received;

(8) whether the authority granted in a power of attorney has been modified by the principal, a legal representative of the principal or a court;

(9) whether the authority of the attorney in fact has been terminated, except by an express provision in the power of attorney showing the date on which the power of attorney terminates;

(10) whether the power of attorney, or any modification or termination thereof, has been recorded, except as to transactions affecting real estate;

(11) whether the principal had legal capacity to execute the power of attorney at the time the power of attorney was executed;

(12) whether, at the time the principal executed the power of attorney, the principal was subjected to duress, undue influence or fraud, or the power of attorney was for any other reason void or voidable, if the power of attorney appears to be regular on its face;

(13) whether the principal is alive;

(14) whether the principal and attorney in fact were married at or subsequent to the time the power of attorney was created and whether an action for annulment, separate maintenance or divorce has been filed by either party; or

(15) the truth or validity of any facts or statements made in an affidavit of the attorney in fact or successor with regard to the ability or capacity of the principal, the authority of the attorney in fact or successor under the power of attorney, the happening of any event or events vesting authority in any successor or contingent attorney in fact, the identity or authority of a person designated in the power of attorney to appoint a substitute or successor attorney in fact or that the principal is alive.

(b) A third person, in good faith and without liability to the principal or the principal's successors in interest, even with knowledge that the principal is disabled, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact acting pursuant to authority granted in a durable power of attorney.

(c) A third person that conducts activities through employees shall not be charged under this act with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney in fact, unless the information is received at a home office or a place where there is an employee with responsibility to act on the information, and the employee has a reasonable time in which to act on the information using the procedures and facilities that are available to the third person in the regular course of its operations.

(d) A third person, when being requested to engage in transactions with a principal through the principal's attorney in fact, may: (1) Require the attorney in fact to provide specimens of the attorney in fact's signature and any other information reasonably necessary or appropriate in order to facilitate the actions of the third person in transacting business through the attorney in fact; (2) require the attorney in fact to indemnify the third person against forgery of the power of attorney, by bond or otherwise. If the power of attorney is durable as defined in subsection (a) of section 3, and amendments thereto, and if either the principal or the attorney in fact seeking to act is and has been a resident of this state for at least two years, and if the attorney in fact has executed in the name of the principal and delivered to the third person an indemnity agreement reasonably satisfactory in form to such third person, no such bond shall be required; and (3) prescribe the place and manner in which the third person will be given any notice respecting the principal's power of attorney and the time in which the third person has to comply with any notice.

New Sec. 10. (a) As between the principal and third persons, the authority granted in a power of attorney shall terminate on the date of termination, if any, set out in the power of attorney or on the date when the third person acquires actual knowledge of the death of the principal or that the authority granted in the power of attorney has been suspended, modified or terminated.

(b) As between the principal and third persons, the acts and transactions of an attorney in fact are binding on the principal and the principal's successors in interest in any situation in which a third person is entitled to rely under section 9, and amendments thereto.

(c) This section shall not prohibit the principal, acting individually, and a third person from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of this act, except that no agreement shall limit or restrict the right of the principal to act with respect to the third person through an attorney in fact appointed in a power of attorney.

New Sec. 11. (a) If the principal has expressly authorized such delegation pursuant to subsection (f) of section 5, and amendments thereto, an attorney in fact or successor from time to time may revocably delegate

any or all of the powers granted in a durable power of attorney to one or more qualified persons, subject to any directions or limitations of the principal expressed in the durable power of attorney, but the attorney in fact making the delegation shall remain responsible to the principal for the exercise or nonexercise of the powers delegated.

(b) The principal in a durable power of attorney may revocably: (1) Name one or more qualified persons as successor attorneys in fact to exercise the authority granted in the durable power of attorney in the order named in the event a prior named attorney in fact resigns, dies, becomes disabled, is not qualified to act or refuses to act; and (2) grant a power to another person, designated by name, by office or by function, including the initial and any successor attorneys in fact, whereby there may be revocably named at any time one or more successor attorneys in fact.

(c) A delegated or successor attorney in fact need not indicate such attorney in fact's capacity as a delegated or successor attorney in fact.

(d) If there is no attorney in fact or successor designated in a durable power of attorney who is willing, able and available to act, the court in lieu of appointing a conservator may appoint any adult person or financial institution as successor attorney in fact to act pursuant to the disabled principal's durable power of attorney, with or without bond and with or without court supervision, upon such terms and conditions as the court may require. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal. Except that in the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

New Sec. 12. Subject to the provisions of the power of attorney and any separate agreement, an attorney in fact is entitled to reasonable compensation for services rendered to the principal as attorney in fact and reimbursement for reasonable expenses incurred as a result of acting as attorney in fact for the principal.

New Sec. 13. (a) The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

(b) Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

(c) For the purposes of subsection (b), a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate. No express approval or waiver shall be required from the legal representative of a disabled principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

(d) The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the district court in the county where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled person.

(e) If the principal is a disabled person, on petition of the principal's legal representative, an adult member of the principal's family or any

interested person, including a person interested in the welfare of the principal, for good cause shown, the court may:

(1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;

(2) modify the authority of an attorney in fact under a durable power of attorney;

(3) declare suspended a power of attorney that is nondurable;

(4) terminate a durable power of attorney;

(5) remove the attorney in fact under a durable power of attorney;

(6) confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and

(7) issue such other orders as the court finds will be in the best interest of the disabled principal, including appointment of a conservator for the principal pursuant to K.S.A. 59-3050, *et seq.*, and amendments thereto.

(f) In addition to any other remedies available under law, if after notice and hearing, the court determines that there has been a showing that the principal is a disabled person and that the attorney in fact has breached such attorney in fact's fiduciary duty to the principal or that there is a reasonable likelihood that such attorney in fact may do so in the immediate future, the court, in its discretion, may issue an order that some or all of the authority granted by the durable power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the durable power of attorney. Such attorney in fact may be designated by the court. The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney fees, incurred by any such persons with respect to such proceeding. The court, after hearing, may allow payment or enter judgment for any such amount in the manner as provided by subsection (f) of section 15, and amendments thereto. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal. Except that in the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

(g) If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

(h) In a proceeding under this act or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a power of attorney to account;

(2) authorize the attorney in fact under a power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a conservator pursuant to K.S.A. 59-3050 *et seq.*, and amendments thereto; and

(3) relieve the attorney in fact of any obligation to exercise authority for a disabled principal under a durable power of attorney.

(i) Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by the attorney in fact or, if the

principal is a disabled person, by a guardian or conservator of the disabled person's estate. If a disabled person has no guardian or conservator of the disabled person's estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor for fraud, misrepresentation or concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.

New Sec. 14. (a) This act applies to the acts and transaction in this state of attorneys in fact under powers of attorney executed in this state or by residents of this state. Further, this act applies to acts and transactions of attorneys in fact in this state or outside this state under powers of attorney that refer to the power of attorney law of Kansas in the instrument creating the power of attorney, if any of the following conditions are met:

- (1) The principal or attorney in fact was a resident of this state at the time the power of attorney was executed;
- (2) the powers and authority conferred relate to property, acts or transactions in this state;
- (3) the acts and transactions of the attorney in fact or successor occurred or were to occur in this state;
- (4) the power of attorney was executed in this state; or
- (5) there is otherwise a reasonable relationship between this state and the subject matters of the power of attorney.

The power of attorney so created remains subject to this act despite a subsequent change in residence of the principal or the attorney in fact and any successor, or the removal from this state of property which was the subject of the power of attorney.

(b) A person who acts as an attorney in fact or successor pursuant to a power of attorney governed by this act is subject to personal jurisdiction in this state with respect to matters relating to acts and transactions of the attorney in fact or successor performed in this state, performed for a resident of this state or affecting property in this state.

(c) A durable power of attorney that purports to have been made under the provisions of the durable power of attorney act of another state is governed by the law of that state and, if durable where executed, is durable and may be carried out and enforced in this state.

(d) A power of attorney executed by a resident of another state, may authorize the carrying out in this state of all acts permitted to be delegated to an attorney in fact by the laws of the state of the residence of the principal, the laws of the state where the power of attorney is executed or the laws of this state, whichever law is most favorable toward authorizing such delegation, and is durable if so designated either under the laws of this state, under the laws of the state of residence of the principal or under the laws of the state where the power of attorney is executed.

New Sec. 15. The repeal of the uniform durable power of attorney act, K.S.A. 58-610 through 58-617 and the repeal of K.S.A. 58-601 and 58-602, shall not affect the validity of powers of attorney created under those sections, the validity of the acts and transactions of attorneys in fact under authority granted in powers of attorney executed under those sections, or the duties of attorneys in fact under powers of attorney executed under those sections.

New Sec. 16. The Kansas power of attorney act adopts by reference 50 U.S.C. 591 of the soldiers and sailors civil relief act.

Sec. 17. K.S.A. 2002 Supp. 58a-602 is hereby amended to read as follows: 58a-602. (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before ~~the effective date of this code~~ *January 1, 2003*.

- (b) If a revocable trust is created or funded by more than one settlor:
 - (1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and
 - (2) to the extent the trust consists of property other than community

property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by ~~the terms of the trust or~~ the power of attorney.

(f) A conservator of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Sec. 18. K.S.A. 58-601, 58-602, 58-610, 58-611, 58-612, 58-613, 58-614, 58-615, 58-616 and 58-617 and K.S.A. 2002 Supp. 58a-602 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.