

House Bill 897

By: Representatives Efstration of the 104th, Willard of the 51st, Trammell of the 132nd, Morris of the 156th, and Caldwell of the 131st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6B of Title 10 of the Official Code of Georgia Annotated, relating to the
2 "Uniform Power of Attorney Act," so as to revise the short title; to provide for definitions;
3 to change provisions relating to applicability; to change provisions relating to the execution
4 of a power of attorney and the effect of a photocopy of it; to clarify provisions relating to the
5 incapacity of a principal; to change provisions relating to the termination of a power of
6 attorney; to clarify the role of a successor agent; to change provisions relating to actions of
7 agents; to change provisions relating to a petition for construction of a power of attorney; to
8 change provisions relating to acceptance of and reliance upon a power of attorney; to change
9 provisions relating to liability for refusal to accept a power of attorney; to change provisions
10 relating to an agent's authority that requires a specific grant or authority and granting general
11 authority; to add a provision relating to the authority of an agent; to change provisions related
12 to the operation of an entity or business; to add provisions relating to an agent's authority
13 relating to estates, trusts, and other beneficial interests; to change provisions relating to an
14 agent's authority relating to personal and family maintenance; to change provisions relating
15 to an agent's authority relating to gifts; to revise the form power of attorney; to change
16 provisions relating to the application of Chapter 6 of this title; to update cross-references to
17 federal law; to provide for related matters; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

20 Chapter 6B of Title 10 of the Official Code of Georgia Annotated, relating to the "Uniform
21 Power of Attorney Act," so as to revise Code Section 10-6B-1, relating to the short title, as
22 follows:

23 "10-6B-1.

24 This chapter shall be known and may be cited as the 'Georgia Uniform Power of Attorney
25 Act.'

26 **SECTION 2.**

27 Said chapter is further amended by adding a new paragraph to Code Section 10-6B-2,
28 relating to definitions, to read as follows:

29 "(3.1) 'Gift' means a transfer of property for less than adequate consideration in money
30 or money's worth that is not a renunciation within the meaning of Code Section 53-1-20."

31 **SECTION 3.**

32 Said chapter is further amended by revising Code Section 10-6B-3, relating to applicability
33 and exclusions, as follows:

34 "10-6B-3.

35 (a) This chapter shall apply to all powers of attorney except:

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

39 (2) A power to make health care decisions;

40 (3) ~~A proxy or other~~ Any delegation to exercise of voting, rights or management, or
41 similar rights with respect related to the governance or administration of an entity or
42 business, including, but not limited to, delegation of voting or management rights;

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

45 ~~Transaction specific powers of attorney, including, but not limited to, powers of~~
46 ~~attorney under Chapter 6 of this title~~ Powers of attorney that only grant authority with
47 respect to a single transaction or series of related transactions involving real estate; and

48 (6) Powers of attorney provided for under Titles 19 and 33; and

49 (7) As set forth in Code Section 10-6B-81.

50 ~~(b) A power of attorney shall not authorize an agent to create a will."~~

51 **SECTION 4.**

52 Said chapter is further amended by revising Code Section 10-6B-5, relating to the execution
53 of a power of attorney, as follows:

54 "10-6B-5.

55 (a) A power of attorney shall be:

56 (1) Signed by the principal or by another individual in such principal's presence at the
57 principal's express direction;

58 (2) Attested in the presence of the principal by ~~one or more~~ a competent witnesses
59 witness who is not also named as an agent in the power of attorney being attested; and

60 (3) Attested as set forth in Code Section 44-2-15, in the presence of the principal, by an
 61 individual before a notary public or other individual authorized by law to administer
 62 oaths who is not a witness for purposes of paragraph (2) of this Code section subsection
 63 and who is not also named as an agent in the power of attorney being attested.

64 (b) ~~All signatures and attestations required by subsection (a) of this Code section shall be~~
 65 ~~performed and conducted in the presence of all parties~~ The individuals provided for in
 66 paragraphs (2) and (3) of subsection (a) of this Code section shall not be required to attest
 67 to the signature of any person other than the principal or the individual signing at the
 68 principal's express direction."

69 SECTION 5.

70 Said chapter is further amended by revising Code Section 10-6B-6, relating to the validity
 71 of power of attorney and the effect of a photocopy, as follows:

72 "10-6B-6.

73 (a) A power of attorney executed in this state on or after July 1, 2017, shall be valid if its
 74 execution complies with Code Section 10-6B-5.

75 ~~(b) This chapter shall not affect a power of attorney executed prior to July 1, 2017, to~~
 76 ~~which the former provisions of Article 7 of Chapter 6 of this title, as such existed on June~~
 77 ~~30, 2017, shall continue to apply.~~

78 ~~(c)~~(b) A power of attorney executed other than in this state shall be valid in this state if,
 79 when the power of attorney was executed, the execution complied with:

80 (1) The law of the jurisdiction that determines the meaning and effect of the power of
 81 attorney pursuant to Code Section 10-6B-7; or

82 (2) The requirements for a military power of attorney pursuant to 10 U.S.C. Section
 83 1044b, in effect on February 1, ~~2017~~ 2018.

84 ~~(d)~~(c) Except as otherwise provided by law other than this chapter, a photocopy or
 85 electronically transmitted copy of an original power of attorney shall have the same effect
 86 as the original; provided, however, that when recording a power of attorney in connection
 87 with a conveyance involving real property, ~~an original~~ a power of attorney shall be used
 88 in a form that complies with Part 1 of Article 1 of Chapter 2 of Title 44."

89 SECTION 6.

90 Said chapter is further amended by adding a new subsection to Code Section 10-6B-8,
 91 relating to the nomination of a conservator and the relationship of the agent to a
 92 court-appointed fiduciary, to read as follows:

93 "(d) A finding by a court that a principal is incapacitated for purposes of this chapter shall
 94 neither constitute a determination of nor create a presumption regarding such principal's
 95 need for a guardian or conservator under Title 29."

96 **SECTION 7.**

97 Said chapter is further amended in Code Section 10-6B-10, relating to the termination of a
 98 power of attorney and agent's authority and a third party reliance, by revising subsections (a)
 99 and (b) and adding a new subsection to read as follows:

100 "(a) A power of attorney shall terminate when:

101 (1) The principal dies;

102 (2) The principal becomes incapacitated, if the power of attorney specifically provides
 103 that it is not durable;

104 (3) The principal revokes the power of attorney, ~~provided that the principal provides the~~
 105 ~~agent with notice of such revocation by certified mail and provided that such notice is~~
 106 ~~filed with the clerk of superior court in the county of domicile of the principal;~~

107 (4) The principal revokes the agent's authority or the agent resigns, becomes
 108 incapacitated, or dies and the power of attorney does not provide for another agent to act
 109 under such power of attorney;

110 (5) The power of attorney provides that it terminates; or

111 (6) The purpose of the power of attorney is accomplished; ~~or~~

112 ~~(7) One of the events specified in paragraph (3) or (4) of this subsection occurs and the~~
 113 ~~power of attorney does not provide for another agent to act under the power of attorney.~~

114 (b) An agent's authority shall terminate when:

115 (1) The agent resigns, becomes incapacitated, or dies;

116 (2) The principal revokes the agent's authority, ~~provided that the principal provides the~~
 117 ~~agent with notice of such revocation by certified mail and provided that such notice is~~
 118 ~~filed with the clerk of superior court in the county of domicile of the principal;~~

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

121 (4) The power of attorney terminates."

122 "(g) Nothing in this Code section shall prevent a principal who notifies an agent of the
 123 revocation of the agent's authority or power of attorney by certified mail or statutory
 124 overnight delivery from filing such notification and evidence of its receipt by the agent
 125 with the clerk of superior court in the county of the principal's domicile for the purposes
 126 of establishing such agent had knowledge of the principal's revocation."

127 **SECTION 8.**

128 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
 129 10-6B-11, relating to the designation of coagents, the role of a successor agent, and
 130 notification of violation, as follows:

131 ~~"(2) Once a predecessor agent resigns, becomes incapacitated, is no longer qualified to~~
 132 ~~serve, or has declined to serve, he or she shall be permanently barred from serving as an~~
 133 ~~agent under the then existing power of attorney~~ An agent who has been incapacitated for
 134 more than six months shall not resume acting as an agent pursuant to the power of
 135 attorney that created the agency during which the agent became incapacitated."

136 **SECTION 9.**

137 Said chapter is further amended by revising subsection (a) of Code Section 10-6B-14,
 138 relating to actions of agents, as follows:

139 "(a) Notwithstanding provisions in the power of attorney, an agent that has accepted
 140 ~~appointment shall act:~~

- 141 (1) Appointment shall act in ~~In~~ accordance with the principal's reasonable expectations
 142 to the extent actually known by the agent and, otherwise, in the principal's best interest;
 143 (2) Appointment shall act in ~~In~~ good faith; ~~and~~
 144 (3) Appointment shall act only ~~Only~~ within the scope of authority granted in the power
 145 of attorney; ~~and~~
 146 (4) Delegation of fiduciary powers under paragraph (7) of subsection (a) of Code Section
 147 10-6B-40, shall have the same duties and liabilities as the principal with respect to such
 148 fiduciary powers."

149 **SECTION 10.**

150 Said chapter is further amended by revising Code Section 10-6B-16, relating to the petition
 151 for construction of power of attorney or role of agent, as follows:

152 "10-6B-16.

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

- 155 (1) The principal or the agent;
 156 (2) A guardian, conservator, personal representative, or other fiduciary acting for the
 157 principal or for the principal's estate;
 158 (3) A person authorized to make health care decisions for the principal;
 159 (4) The principal's spouse, parent, or descendant;
 160 (5) An individual who would qualify as a presumptive heir of the principal;

- 161 (6) A person named as a beneficiary to receive any property, benefit, or contractual right
 162 on the principal's death or as a beneficiary of a trust created by or for the principal that
 163 has a financial interest in the principal's estate;
- 164 (7) A governmental agency having authority to protect the welfare of the principal;
- 165 (8) The principal's caregiver or another person that demonstrates sufficient interest in the
 166 principal's welfare; and
- 167 (9) A person asked to accept the power of attorney.
- 168 (b) If a petition under this Code section was in the best interest of the principal and the
 169 agent admitted to a violation of this chapter or a court found that such agent violated this
 170 chapter, a court may order the principal to reimburse the persons, other than a
 171 governmental agency, who made such petition for part or all of the reasonable attorney's
 172 fees and expenses of litigation incurred by such persons, provided that such fees and
 173 expenses were not imposed on the agent, were related to the agent's violation of this
 174 chapter, and were reasonable in the context of the agent's misconduct and the general
 175 circumstances of the principal.
- 176 ~~(b)~~(c) Upon motion by the principal, the court shall dismiss a petition filed under this Code
 177 section, unless the court finds that the principal lacks capacity to revoke the agent's
 178 authority or the power of attorney."

179 **SECTION 11.**

180 Said chapter is further amended by revising Code Section 10-6B-19, relating to acceptance
 181 of and reliance upon a power of attorney, as follows:

182 "10-6B-19.

183 (a) As used in this Code section, the term 'attested power of attorney' means a power of
 184 attorney that was purportedly attested as set forth in Code Section 44-2-15.

185 (b) A person that in good faith accepts a an attested power of attorney without actual
 186 knowledge that the signature is not genuine may rely upon the presumption under Code
 187 Section 10-6B-5 that the signature is genuine.

188 ~~(b)~~(c) A person that in good faith accepts a an attested power of attorney without actual
 189 knowledge that ~~the~~ such power of attorney is void, invalid, or terminated; ; that the
 190 purported agent's authority is void, invalid, or terminated; ; or that the agent is exceeding
 191 or improperly exercising the agent's authority may rely upon ~~the~~ such power of attorney
 192 as if ~~the power of attorney were~~ it were genuine, valid, and still in effect; ; the agent's
 193 authority were genuine, valid, and still in effect; ; and the agent had not exceeded and had
 194 properly exercised the authority.

195 ~~(c)~~(d) A person that is asked to accept a an attested power of attorney may request, and
 196 rely upon, without further investigation:

- 197 (1) An agent's certification under penalty of perjury of any factual matter concerning the
 198 principal, agent, or such power of attorney;
- 199 ~~(2) A coagent's certification under penalty of perjury of any factual matter concerning~~
 200 ~~the principal, agent, or power of attorney;~~
- 201 ~~(3)~~(2) An English translation of the such power of attorney if ~~the power of attorney it~~
 202 contains, in whole or in part, language other than English; and
- 203 ~~(4)~~(3) An opinion of an attorney as to any matter of law concerning the such power of
 204 attorney if the person making the request provides in a writing or other record the reason
 205 for the request.
- 206 ~~(d)~~(e) An English translation or an opinion of an attorney requested under this Code
 207 section shall be provided at the principal's expense unless the request is made more than
 208 seven business days after ~~the~~ an attested power of attorney is presented for acceptance.
- 209 ~~(e)~~(f) For purposes of this Code section, a person that conducts activities through
 210 employees shall be without actual knowledge of a fact relating to a an attested power of
 211 attorney, a principal, or an agent if the employee conducting the transaction involving the
 212 such power of attorney is without actual knowledge of the fact."

213 SECTION 12.

214 Said chapter is further amended by revising Code Section 10-6B-20, relating to liability for
 215 refusal to accept a power of attorney, as follows:

216 "10-6B-20.

217 (a) As used in this Code section, the term 'statutory':

218 (1) 'Attested statutory form power of attorney' means a statutory form power of attorney
 219 that was purportedly attested as set forth in Code Section 44-2-15.

220 (2) 'Statutory form power of attorney' means ~~using~~ a power of attorney:

221 ~~(1)~~(A) Substantially in the ~~The~~ form set forth in Code Section 10-6B-70;

222 ~~(2)~~(B) That meets the requirements for a ~~A~~ military power of attorney pursuant to 10
 223 U.S.C. Section 1044b, in effect on February 1, ~~2017~~ 2018; or

224 ~~(3)~~(C) That ~~A document that~~ substantially reflects the language in the form set forth
 225 in Code Section 10-6B-70, ~~so long as it is witnessed as required by Code Section~~
 226 ~~10-6B-5.~~

227 (b) For purposes of:

228 (1) Subparagraph (a)(2)(C) of this Code section, a power of attorney shall be deemed to
 229 substantially reflect the language in the form set forth in Code Section 10-6B-70 if it:

230 (A) Grants or withholds authority for each of the descriptive terms for the subjects
 231 described in Code Sections 10-6B-43 through 10-6B-56, either by reference to the
 232 descriptive terms or citation to the specific Code sections;

233 (B) Grants or withholds authority for each of the powers described in subsection (a)
 234 of Code Section 10-6B-40, either by reference to the powers or citation to such
 235 subsection; and

236 (C) Contains a provision substantially similar to the following: 'Any person, including
 237 my agent, may rely upon the validity of this power of attorney or a copy of it unless that
 238 person has actual knowledge it has terminated or is invalid.'; and

239 (2) Subparagraphs (1)(A) and (1)(B) of this subsection, a power of attorney shall be
 240 deemed to satisfy the requirement to grant authority with respect to a subject described
 241 in Code Sections 10-6B-43 through 10-6B-56 and a power described in subsection (a) of
 242 Code Section 10-6B-40, so long as it grants some authority with respect to such subject
 243 or power and regardless of whether it modifies the authority granted with respect to such
 244 subject or power under Code Sections 10-6B-43 through 10-6B-56 and subsection (a) of
 245 Code Section 10-6B-40.

246 (c) Except as otherwise provided in subsection ~~(c)~~ (d) of this Code section:

247 (1) A person shall either accept a an attested statutory form power of attorney or request
 248 a certification, a translation, or an opinion of an attorney under subsection ~~(c)~~ (d) of Code
 249 Section 10-6B-19 no later than seven business days after presentation of ~~the~~ such power
 250 of attorney for acceptance;

251 (2) If a person requests a certification, a translation, or an opinion of an attorney under
 252 subsection ~~(c)~~ (d) of Code Section 10-6B-19, the person shall accept the attested statutory
 253 form power of attorney no later than five business days after receipt of the certification,
 254 translation, or opinion of an attorney; and

255 (3) A person shall not require an additional or different form of the attested statutory
 256 form power of attorney for authority granted in the ~~power of attorney~~ document
 257 presented.

258 ~~(c)~~(d) A person shall not be required to accept a an attested statutory form power of
 259 attorney if:

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

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

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

266 (4) A request for a certification, a translation, or an opinion of an attorney under
 267 subsection ~~(c)~~ (d) of Code Section 10-6B-19 is refused;

268 (5) The person in good faith believes that ~~the~~ such power of attorney is not valid or that
 269 the agent does not have the authority to perform the act requested, whether or not a

270 certification, a translation, or an opinion of an attorney under subsection ~~(e)~~ (d) of Code
 271 Section 10-6B-19 has been requested or provided; or

272 (6) The person makes, or has actual knowledge that another person has made, a report
 273 to protective services as such term is defined in Code Section 30-5-1 stating a good faith
 274 belief that the principal may be subject to physical or financial abuse, neglect,
 275 exploitation, or abandonment by the agent or a person acting for or with the agent.

276 ~~(d)~~(e) A person that refuses to accept a an attested statutory form power of attorney in
 277 violation of this Code section shall be subject to:

278 (1) A court order mandating acceptance of ~~the~~ such power of attorney; and

279 (2) Liability for reasonable attorney's fees and expenses of litigation incurred in any
 280 action or proceeding that confirms the validity of the power of attorney or mandates
 281 acceptance of ~~the~~ such power of attorney.

282 ~~(e)~~(f) For purposes of this Code section, a person that conducts activities through
 283 employees shall be without actual knowledge of a fact relating to a an attested statutory
 284 form power of attorney, a principal, or an agent if the employee conducting the transaction
 285 involving ~~the~~ such power of attorney is without actual knowledge of the fact."

286

SECTION 13.

287 Said chapter is further amended by revising Code Section 10-6B-40, relating to an agent's
 288 authority that requires a specific grant and granting of general authority, as follows:

289 "10-6B-40.

290 (a)(1) An agent under a power of attorney may do the following on behalf of the
 291 principal or with the principal's property only if the power of attorney expressly grants
 292 the agent the authority and exercise of the authority is not otherwise prohibited by another
 293 agreement or instrument to which the authority or property is subject:

294 ~~(1)~~(A) Create, fund, amend, revoke, or terminate an inter vivos trust;

295 ~~(2)~~(B) Make a gift;

296 ~~(3)~~(C) Create or change rights of survivorship;

297 ~~(4)~~(D) Create or change a beneficiary designation;

298 ~~(5)~~(E) Authorize another person to exercise ~~Delegate~~ authority granted under the
 299 power of attorney;

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

302 ~~(7)~~(G) Exercise fiduciary powers, other than those associated with an ownership
 303 interest as provided under paragraph (14) of Code Section 10-6B-48, that the principal
 304 has authority to delegate;

305 ~~(8)~~(H) Exercise authority over the content of electronic communications, as defined
 306 in 18 U.S.C. Section 2510(12), in effect on February 1, ~~2017~~ 2018, sent or received by
 307 the principal; or

308 ~~(9)~~(I) Renounce an interest in ~~Disclaim~~ property, including a power of appointment.

309 (2) A failure to grant authority under subparagraphs (1)(A) through (1)(D) of this
 310 subsection shall not prevent an agent from accessing information, depositing money, or
 311 withdrawing money, pursuant to the agent's other authority and in accordance with the
 312 agent's duties to the principal, from a revocable trust or an account or other banking
 313 arrangement with a bank or other financial institution.

314 (b) Notwithstanding a grant of authority to:

315 (1) To do an act described in subsection (a) of this Code section, unless the power of
 316 attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the
 317 principal, shall not exercise authority under a power of attorney to create in the agent, or
 318 in an individual to whom the agent owes a legal obligation of support, an interest in the
 319 principal's property, whether by gift, right of survivorship, beneficiary designation,
 320 disclaimer, or otherwise; and

321 (2) To exercise a fiduciary power described in subparagraph (a)(1)(G), an agent may
 322 only exercise those fiduciary powers of the principal that are expressly and clearly
 323 identified in the power of attorney. In identifying such fiduciary powers, the principal
 324 shall specify the persons for which the principal acts as a fiduciary. If such persons are
 325 not individuals, the principal shall specify only the estate, trust, or other legal or
 326 commercial entity for which the principal acts as a fiduciary. With respect to such an
 327 entity, the principal shall not be required to specify additional persons such as
 328 beneficiaries, members, partners, or other similar persons.

329 (c) Subject to subsections (a), (b), (d), and (e) of this Code section, if a power of attorney
 330 grants to an agent authority to do all acts that a principal could do, the agent has the general
 331 authority described in Code Sections 10-6B-43 through 10-6B-55.

332 (d) Unless the power of attorney otherwise provides, a grant of authority to make a gift
 333 shall be subject to Code Section 10-6B-56.

334 (e) Subject to subsections (a), (b), and (d) of this Code section, if the subjects over which
 335 authority is granted in a power of attorney are similar or overlap, the broadest authority
 336 shall control.

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

341 (g) An act performed by an agent pursuant to a power of attorney shall have the same
 342 effect and inures to the benefit of and binds the principal and the principal's successors in
 343 interest as if the principal had performed the act.

344 (h) A power of attorney shall not authorize an agent to:

345 (1) Execute or revoke any will or codicil for the principal;

346 (2) Make an affidavit as to the personal knowledge of the principal; or

347 (3) Vote in any public election on behalf of the principal."

348 **SECTION 14.**

349 Said chapter is further amended by revising paragraphs (9) and (10) of Code Section
 350 10-6B-42, relating to construction of authority of agent generally, as follows:

351 "(9) Except as otherwise provided under federal privacy laws, access communications
 352 intended for, and communicate on behalf of the principal, whether by mail, electronic
 353 transmission, telephone, or other means; ~~and~~

354 (10) Exercise all authority over digital assets for which an express grant by the principal
 355 is not required; and

356 ~~(10)~~(11) Do any lawful act with respect to the subject and all property related to the
 357 subject."

358 **SECTION 15.**

359 Said chapter is further amended in Code Section 10-6B-48, relating to the operation of an
 360 entity or business, by deleting "and" at the end of paragraph (12), by replacing the period
 361 with "; and" at the end of paragraph (13), and by adding a new paragraph (14) to read as
 362 follows:

363 "(14) Exercise the principal's fiduciary powers associated with an ownership interest."

364 **SECTION 16.**

365 Said chapter is further amended by revising paragraphs (7) and (8) of Code Section
 366 10-6B-50, relating to estates, trusts, and other beneficial interests, as follows:

367 "(7) Create, amend, and revoke a revocable trust so long as the terms of the trust only
 368 authorize distributions that would be allowable under the power of attorney if the
 369 principal held the trust assets outright and provide for the distribution of all trust assets
 370 to the principal's estate upon the principal's death;

371 (8) Transfer an interest of the principal in real property, stocks and bonds, accounts with
 372 financial institutions or securities intermediaries, insurance, annuities, and other property
 373 to the trustee of a revocable trust created by the principal as settlor or as described in
 374 paragraph (7) of this Code section; and

375 ~~(8)(9)~~ With respect to a bona fide dispute, Reject, renounce, disclaim, release, or consent
 376 to a reduction in or modification of a share in or payment from an estate, trust, or other
 377 beneficial interest."

378 **SECTION 17.**

379 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section
 380 10-6B-52, relating to personal and family maintenance, as follows:

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

384 (A) The principal's minor children;

385 (B) The principal's adult children who are pursuing a postsecondary school education
 386 and are under 25 years of age;

387 (C) The principal's parents or the parents of the principal's spouse, if the principal had
 388 established a pattern of such payments or indicated a clear intent to make such
 389 payments; and

390 (D) The principal's minor dependents who are not also the principal's children, if the
 391 principal had established a pattern of such payments or indicated a clear intent to make
 392 such payments;

393 (E) The principal's adult descendants who are under 25 years of age, not the principal's
 394 children, and pursuing a postsecondary school education, if the principal had
 395 established a pattern of such payments or indicated a clear intent to make such
 396 payments; and

397 ~~(D)~~(F) Any other individuals legally entitled to be supported by the principal;"

398 **SECTION 18.**

399 Said chapter is further amended by revising Code Section 10-6B-56, relating to gifts, as
 400 follows:

401 "10-6B-56.

402 (a) As used in this Code section, the term a gift ~~for~~:

403 (1) 'For the benefit of' means a person includes a gift to a trust, an account under the
 404 Uniform Transfers to Minors Act, ~~and~~ a tuition savings account or prepaid tuition plan
 405 as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529, in effect on
 406 February 1, ~~2017~~, 2018 or an ABLE account as defined under Internal Revenue Code
 407 Section 529A, 26 U.S.C. Section 529A, in effect on February 1, 2018.

408 (2) 'Gift splitting' means the election to have a gift treated as made one-half by the
 409 transferor and one-half by the spouse pursuant to Internal Revenue Code Section 2513,
 410 26 U.S.C. Section 2513, in effect on February 1, 2018.

411 (3) 'Section 2503(b) amount' means the federal gift tax exclusion under Internal Revenue
 412 Code Section 2503(b), 26 U.S.C. Section 2503(b), in effect on February 1, 2018, indexed
 413 for future years under the provisions in effect on February 1, 2018.

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

416 (1) Make outright to, or for the benefit of, a person, a gift of any of the principal's
 417 property, including by the exercise of a presently exercisable general power of
 418 appointment held by the principal, in the following amounts, without regard to whether
 419 the federal gift tax exclusion applies to the gift:

420 (A) If the principal is not married or is legally separated at the time of the gift, in an
 421 amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion
 422 under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b), in effect on
 423 February 1, 2017, without regard to whether the federal gift tax exclusion applies to the
 424 gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal
 425 Revenue Code Section 2513, 26 U.S.C. Section 2513, in effect on February 1, 2017, in
 426 an amount per donee not to exceed twice the annual federal gift tax exclusion limit
 427 amount; or

428 (B) If the principal is married and not legally separated at the time of the gift, in an
 429 amount per donee not to exceed twice the Section 2503(b) amount; and

430 ~~(2) Consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513,~~
 431 ~~in effect on February 1, 2017, to the splitting of a gift made by the principal's spouse in~~
 432 ~~an amount per donee not to exceed the aggregate annual gift tax exclusions for both~~
 433 ~~spouses to gift splitting if the principal has a spouse for purposes of gift splitting.~~

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

- 438 (1) The value and nature of the principal's property;
 439 (2) The principal's foreseeable obligations and need for maintenance;
 440 (3) Minimization of taxes, including income, estate, inheritance, generation-skipping
 441 transfer, and gift taxes;
 442 (4) Eligibility for a benefit, a program, or assistance under a law or regulation; and
 443 (5) The principal's personal history of making or joining in making gifts."

444 **SECTION 19.**

445 Said chapter is further amended by revising Code Section 10-6B-70, relating to the form
446 power of attorney, as follows:

447 "10-6B-70.

448 A document substantially in the following form may be used to create a statutory form
449 power of attorney that has the meaning and effect prescribed by this chapter.

450 'State of Georgia

451 County of _____

452 **STATUTORY FORM POWER OF ATTORNEY**453 **IMPORTANT INFORMATION**

454 This power of attorney authorizes another person (your agent) to make decisions
455 concerning your property for you (the principal). Your agent will be able to make
456 decisions and act with respect to your property (including your money) whether or not you
457 are able to act for yourself. The meaning of authority over subjects listed on this form is
458 explained in O.C.G.A. Chapter 6B of Title 10.

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

460 You should select someone you trust to serve as your agent. Unless you specify otherwise
461 in the Special Instructions, generally the agent's authority will continue until you die or
462 revoke the power of attorney or the agent resigns or is unable to act for you. ~~If you revoke~~
463 ~~the power of attorney, you must communicate your revocation by notice to the agent in~~
464 ~~writing by certified mail and file such notice with the clerk of superior court in your county~~
465 ~~of domicile.~~

466 Your agent is not entitled to any compensation unless you state otherwise in the Special
467 Instructions. Your agent shall be entitled to reimbursement of reasonable expenses
468 incurred in performing the acts required by you in your power of attorney.

469 This form provides for designation of one agent. If you wish to name more than one agent,
470 you may name a successor agent or name a coagent in the Special Instructions. Coagents
471 will not be required to act together unless you include that requirement in the Special
472 Instructions.

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

475 This power of attorney shall be durable unless you state otherwise in the Special
476 Instructions.

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

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

481 **DESIGNATION OF AGENT**

482 I _____ (Name of principal)
483 name the following person as my agent:

484 Name of agent: _____

485 Agent's address: _____

486 Agent's telephone number: _____

487 Agent's e-mail address: _____

488 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

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

490 Name of successor agent: _____

491 Successor agent's address: _____

492 Successor agent's telephone number: _____

493 Successor agent's e-mail address: _____

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

496 Name of second successor agent: _____

497 Second successor agent's address: _____

498 Second successor agent's telephone number: _____

499 Second successor agent's e-mail address: _____

500 **GRANT OF GENERAL AUTHORITY**

501 I grant my agent and any successor agent general authority to act for me with respect to the
502 following subjects as defined in O.C.G.A. Chapter 6B of Title 10:

503 (INITIAL each subject you want to include in the agent's general authority. If you wish
504 to grant general authority over all of the subjects, you may initial "all preceding subjects"
505 instead of initialing each subject.)

- 506 Real property
- 507 Tangible personal property
- 508 Stocks and bonds
- 509 Commodities and options
- 510 Banks and other financial institutions
- 511 Operation of entity or business
- 512 Insurance and annuities
- 513 Estates, trusts, and other beneficial interests
- 514 Claims and litigation
- 515 Personal and family maintenance
- 516 Benefits from governmental programs or civil or military service
- 517 Retirement plans
- 518 Taxes
- 519 All preceding subjects

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

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

523 (CAUTION: Granting any of the following will give your agent the authority to take
524 actions that could significantly reduce your property or change how your property is
525 distributed at your death. INITIAL ONLY the specific authority you WANT to give your
526 agent. You should give your agent specific instructions in the Special Instructions when
527 you authorize your agent to make gifts.)

- 528 Create, fund, amend, revoke, or terminate an inter vivos trust

- 529 (___) Make a gift, subject to the limitations of O.C.G.A. § 10-6B-56 and any Special
 530 Instructions in this power of attorney
- 531 (___) Create or change rights of survivorship
- 532 (___) Create or change a beneficiary designation
- 533 (___) Authorize another person to exercise the authority granted under this power of
 534 attorney
- 535 (___) Waive the principal's right to be a beneficiary of a joint and survivor annuity,
 536 including a survivor benefit under a retirement plan
- 537 (___) ~~Access~~ Exercise authority over the content of electronic communications sent or
 538 received by the principal
- 539 (___) Exercise fiduciary powers that the principal has authority to delegate and that are
 540 expressly and clearly identified (including the persons for which the principal acts as a
 541 fiduciary) in the Special Instructions
- 542 (___) ~~Disclaim or refuse~~ Renounce an interest in property, including a power of
 543 appointment

544 **LIMITATION ON AGENT'S AUTHORITY**

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

548 **SPECIAL INSTRUCTIONS (OPTIONAL)**

549 You may give special instructions on the following lines (you may add lines or place your
 550 special instructions in a separate document and attach it to the power of attorney):

551 _____

552 _____

553 _____

554 _____

555 _____

556 _____

557 **EFFECTIVE DATE**

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

560 **NOMINATION OF CONSERVATOR (OPTIONAL)**

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

563 Name of nominee for conservator of my estate:
564 _____
565 Nominee's address: _____
566 Nominee's telephone number: _____
567 Nominee's e-mail address: _____

568 **RELIANCE ON THIS POWER OF ATTORNEY**

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

571 **SIGNATURE AND ACKNOWLEDGMENT**

572 _____
573 Your signature Date
574 _____
575 Your name printed
576 _____
577 _____
578 Your address
579 _____
580 Your telephone number
581 _____
582 Your e-mail address

583 This document was signed or acknowledged in my presence on _____,
584 (Date)
585 by _____.
586 (Name of principal)
587 _____
588 (Witness's signature)

589 _____.

590 (Witness's name printed)

591 _____

592 _____

593 Witness's address

594 _____

595 Witness's telephone number

596 _____

597 Witness's e-mail address

598 State of Georgia

599 County of _____

600 This document was signed or acknowledged in my presence on _____,

601 (Date)

602 by _____.

603 (Name of principal)

604 _____ (Seal)

605 Signature of notary

606 My commission expires: _____

607 This document prepared by: _____.

608 **IMPORTANT INFORMATION FOR AGENT**

609 **Agent's Duties**

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

613 You must:

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

617 (2) Act in good faith;

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

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

622 _____ by _____ as Agent.
 623 (Principal's name) (Your signature)

624 (_____ Principal's name _____) by (_____ Your signature _____) as Agent.

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

- 626 (1) Act loyally for the principal's benefit;
 627 (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
 628 (3) Act with care, competence, and diligence;
 629 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the
 630 principal;
 631 (5) Cooperate with any person that has authority to make health care decisions for the
 632 principal to do what you know the principal reasonably expects or, if you do not know
 633 the principal's expectations, to act in the principal's best interest; and
 634 (6) Attempt to preserve the principal's estate plan if you know the plan and preserving
 635 the plan is consistent with the principal's best interest.

636 **Termination of Agent's Authority**

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

- 640 (1) Death of the principal;
 641 (2) The principal's revocation of your authority or the power of attorney ~~so as long as the~~
 642 ~~revocation of the power of attorney is communicated to you in writing by certified mail~~
 643 ~~and provided that such notice is filed with the clerk of superior court in the county of~~
 644 ~~domicile of the principal;~~
 645 (3) The occurrence of a termination event stated in the power of attorney;
 646 (4) The purpose of the power of attorney is fully accomplished; or
 647 (5) If you are married to the principal, a legal action is filed with a court to end your
 648 marriage, or for your legal separation, unless the Special Instructions in this power of
 649 attorney state that such an action will not terminate your authority.

650 **Liability of Agent**

651 The meaning of the authority granted to you is defined in O.C.G.A. Chapter 6B of Title 10.
 652 If you violate O.C.G.A. Chapter 6B of Title 10 or act outside the authority granted, you
 653 may be liable for any damages caused by your violation.

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

656 **SECTION 20.**

657 Said chapter is further amended by revising Code Section 10-6B-71, relating to the optional
 658 form for agent certification of facts, as follows:

659 "10-6B-71.

660 The following optional form may be used by an agent to certify facts concerning a power
 661 of attorney.

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

664 State of Georgia

665 County of _____

666 I, _____ (name of agent), certify under penalty
 667 of perjury that _____ (name of principal) granted
 668 me authority as an agent or successor agent in a power of attorney dated
 669 _____.

670 I further certify that to my knowledge:

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

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

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

678 (4) _____
 679 _____
 680 _____
 681 _____
 682 _____

683 (Insert other relevant statements)

684 **SIGNATURE AND ACKNOWLEDGMENT**

685 _____
 686 Agent's signature _____
Date

687 _____
 688 Agent's name printed

689 _____
 690 _____

691 Agent's address
 692 _____

693 Agent's telephone number
 694 _____

695 Agent's e-mail address

696 This document was signed or acknowledged in my presence on _____,
 697 (Date)

698 by _____
 699 (Name of agent)

700 _____ (Seal)
 701 Signature of notary

702 My commission expires: _____

703 This document prepared by: _____."

704 **SECTION 21.**

705 Said chapter is further amended by revising Code Section 10-6B-81, relating to the
 706 application of Chapter 6, as follows:

707 "10-6B-81.

708 (a) Code Section 10-6B-19 shall apply retroactively to powers of attorney created before
 709 July 1, 2018. The remainder of this chapter shall not apply to a power of attorney executed
 710 before July 1, 2017.

711 (b) When Code Section 10-6B-3 applies to a power of attorney, Chapter 6 of this title shall
 712 not apply to a such power of attorney created pursuant to this chapter.

713 (c) When, other than Code Section 10-6B-19, this chapter does not apply to a power of
 714 attorney:

715 (1) It shall not affect the application of Chapter 6 of this title; and

716 (2) The former provisions of Article 7 of Chapter 6 of this title, as such existed on
 717 June 30, 2017, shall remain applicable."

718 **SECTION 22.**

719 Said chapter is further amended by replacing "February 1, 2017" with "February 1, 2018"
 720 wherever the former occurs in:

721 (1) Code Section 10-6B-9, relating to when power of attorney effective;

722 (2) Code Section 10-6B-22, relating to laws applicable to financial institutions and entities;

723 (3) Code Section 10-6B-52, relating to personal and family maintenance;

724 (4) Code Section 10-6B-54, relating to retirement plans; and

725 (5) Code Section 10-6B-55, relating to taxes.

726 **SECTION 23.**

727 All laws and parts of laws in conflict with this Act are repealed.