

Bill No. CS for SB 1066

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)
Delete everything after the enacting clause

and insert:

Section 1. Subsections (1), (4), and (5) of section 709.08, Florida Statutes, are amended to read:

709.08 Durable power of attorney.--

(1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.08, Florida Statutes"; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity, except as otherwise provided by this section. The durable power of

Bill No. CS for SB 1066

Amendment No. ____

1 attorney is exercisable as of the date of execution; however,
2 if the durable power of attorney is conditioned upon the
3 principal's lack of capacity to manage property as defined in
4 s. 744.102(10)(a), the durable power of attorney is
5 exercisable upon the delivery of affidavits in paragraphs (c)
6 and (d) to the third party.

7 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
8 AFFIDAVITS.--

9 (a) Any third party may rely upon the authority
10 granted in a durable power of attorney which is not
11 conditioned on the principal's lack of capacity to manage
12 property until the third party has received notice as provided
13 in subsection (5). A third party may, but need not, require
14 the attorney in fact to execute an affidavit pursuant to
15 paragraph (c).

16 (b) Any third party may rely upon the authority
17 granted in a durable power of attorney which is conditioned on
18 the principal's lack of capacity to manage property as defined
19 in s. 744.102(10)(a) only after receiving the affidavits
20 provided in paragraphs (c) and (d), and such reliance shall
21 end when the third party has received notice as provided in
22 subsection (5).~~Until a third party has received notice of~~
23 ~~revocation pursuant to subsection (5), partial or complete~~
24 ~~termination of the durable power of attorney by adjudication~~
25 ~~of incapacity, suspension by initiation of proceedings to~~
26 ~~determine incapacity, death of the principal, or the~~
27 ~~occurrence of an event referenced in the power of attorney,~~
28 ~~the third party may act in reliance upon the authority granted~~
29 ~~in the durable power of attorney.~~

30 (c) ~~A third party that has not received written notice~~
31 ~~under subsection (5) may, but need not, require that the~~

Bill No. CS for SB 1066

Amendment No. ____

1 ~~attorney in fact execute~~ An affidavit executed by the attorney
2 in fact must state where the principal is domiciled, that the
3 principal is not deceased, and ~~stating~~ that there has been no
4 revocation, partial or complete termination by adjudication of
5 incapacity or by the occurrence of an event referenced in the
6 durable power of attorney, or suspension by initiation of
7 proceedings to determine incapacity or to appoint a guardian
8 of the durable power of attorney at the time the power of
9 attorney is exercised. A written affidavit executed by the
10 attorney in fact under this paragraph may, but need not, be in
11 the following form:

12

13 STATE OF

14 COUNTY OF

15

16 Before me, the undersigned authority, personally
17 appeared ...(attorney in fact)... ("Affiant"), who swore or
18 affirmed that:

19 1. Affiant is the attorney in fact named in the
20 Durable Power of Attorney executed by ...(principal)...
21 ("Principal") on ...(date)....

22 2. This Durable Power of Attorney is currently
23 exercisable by Affiant. The principal is domiciled in
24 ...insert name of state, territory or foreign county....

25 ~~3.2.~~ To the best of the Affiant's knowledge after
26 diligent search and inquiry:

27 a. ~~The Principal is not deceased, has not been~~
28 ~~adjudicated incapacitated, and has not revoked, partially or~~
29 ~~completely terminated, or suspended the Durable Power of~~
30 ~~Attorney; and~~

31 b. There has been no revocation, partial or complete

Bill No. CS for SB 1066

Amendment No. ____

1 termination by adjudication of incapacity or by the occurrence
2 of an event referenced in the durable power of attorney, or
3 suspension by initiation of proceedings to determine
4 incapacity or to appoint a guardian ~~A petition to determine~~
5 ~~the incapacity of or to appoint a guardian for the Principal~~
6 ~~is not pending.~~

7 ~~4.3.~~ Affiant agrees not to exercise any powers granted
8 by the Durable Power of Attorney if Affiant attains knowledge
9 that it has been revoked, partially or completely terminated,
10 suspended, or is no longer valid because of the death or
11 adjudication of incapacity of the Principal.

12
13
14 ...Affiant...
15

16 Sworn to (or affirmed) and subscribed before me
17 this.... day of , ...(month).....(year)..., by ...(name
18 of person making statement)...

19
20 ...(Signature of Notary Public-State of Florida)...
21 (Print, Type, or Stamp Commissioned Name of Notary Public)
22 Personally Known OR Produced Identification
23 ...(Type of Identification Produced)...

24
25 (d) A determination that a principal lacks the
26 capacity to manage property as defined in s. 744.102(10)(a)
27 must be made and evidenced by the affidavits of at least two
28 physicians licensed to practice medicine as of the date of the
29 affidavit. At least one of the physicians must be the
30 attending physician. For purposes of this section, the
31 attending physician is the primary physician who has

Bill No. CS for SB 1066

Amendment No.

1 responsibility for the treatment and care of the principal.
 2 Affidavits executed by each of the physicians must state where
 3 the physician is licensed to practice medicine, whether the
 4 physician is an attending physician, and that the physician
 5 believes that the principal lacks the capacity to manage
 6 property as defined in s. 744.102(10)(a). The affidavit may,
 7 but need not, be in the following form:

8
 9 STATE OF
 10 COUNTY OF

11
 12 Before me, the undersigned authority, personally
 13 appeared(name of physician)..., Affiant, who swore or
 14 affirmed that:

15 1. Affiant is a physician licensed to practice
 16 medicine in ...(name of state, territory, or foreign
 17 country)....

18 2. Affiant is () is not () (check one) the
 19 primary physician who has responsibility for the treatment and
 20 care of ...(principal's name)....

21 3. To the best of Affiant's knowledge after reasonable
 22 inquiry, Affiant believes that the principal lacks the
 23 capacity to manage property, including taking those actions
 24 necessary to obtain, administer, and dispose of real and
 25 personal property, intangible property, business property,
 26 benefits, and income.

27 _____
 28 Affiant

29
 30 Sworn to (or affirmed) and subscribed before me this
 31 ...day of ...(month)..., ...(year)..., by (name of person

Bill No. CS for SB 1066

Amendment No. ____

1 making statement).....

2

3(Signature of Notary Public-State of Florida)....

4

5(Print, Type, or Stamp Commissioned Name of Notary
6 Public)....

7

8 Personally Known OR Produced Identification

9

10(Type of Identification Produced)....

11 (e) A third party may not rely on the authority
12 granted in a durable power of attorney conditioned on the
13 principal's lack of capacity to manage property as defined in
14 s. 744.102(10)(a) when any affidavit presented was executed
15 more than 6 months prior to the first presentation of the
16 durable power of attorney to the third party.

17 (f)(d) Third parties who act in reliance upon the
18 authority granted to the attorney in fact under the durable
19 power of attorney and in accordance with the instructions of
20 the attorney in fact must be held harmless by the principal
21 from any loss suffered or liability incurred as a result of
22 actions taken prior to receipt of written notice pursuant to
23 subsection (5) of revocation, suspension, notice of a petition
24 to determine incapacity, partial or complete termination, or
25 death of the principal. A person who acts in good faith upon
26 any representation, direction, decision, or act of the
27 attorney in fact is not liable to the principal or the
28 principal's estate, beneficiaries, or joint owners for those
29 acts.

30 (g)(e) A durable power of attorney may provide that
31 the attorney in fact is not liable for any acts or decisions

Bill No. CS for SB 1066

Amendment No. ____

1 made by the attorney in fact in good faith and under the terms
2 of the durable power of attorney.

3 (5) NOTICE.--

4 (a) A notice, including, but not limited to, a notice
5 of revocation, notice of partial or complete termination by
6 adjudication of incapacity or by the occurrence of an event
7 referenced in the durable power of attorney, notice of death
8 of the principal, notice of suspension by initiation of
9 proceedings to determine incapacity or to appoint a guardian,
10 or other notice, ~~suspension, or otherwise,~~ is not effective
11 until written notice is served upon the attorney in fact or
12 any third persons relying upon a durable power of attorney.

13 (b) Notice must be in writing and served on the person
14 or entity to be bound by the ~~such~~ notice. Service may be by
15 any form of mail that requires a signed receipt or by personal
16 delivery as provided for service of process. Service is
17 complete when received by interested persons or entities
18 specified in this section and in chapter 48, where applicable.
19 In the case of a financial institution as defined in chapter
20 655, notice, when not mailed, must be served during regular
21 business hours upon an officer or manager of the financial
22 institution at the financial institution's principal place of
23 business in Florida and its office where the power of attorney
24 or account was presented, handled, or administered. Notice by
25 mail to a financial institution must be mailed to the
26 financial institution's principal place of business in this
27 state and its office where the power of attorney or account
28 was presented, handled, or administered. Except for service of
29 court orders, a third party served with notice must be given
30 14 calendar days after service to act upon that notice. In the
31 case of a financial institution, notice must be served before

Bill No. CS for SB 1066

Amendment No. ____

1 the occurrence of any of the events described in s. 674.303.

2 Section 2. This act shall take effect January 1, 2001.

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5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

10 A bill to be entitled
11 An act relating to durable powers of attorney;
12 amending s. 709.08, F.S.; providing for durable
13 powers of attorney contingent upon a specified
14 condition; providing guidelines for such
15 powers; providing statutory forms for
16 affidavits to attest to specified condition;
17 providing an effective date.

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