

Bill No. CS for SB 1066

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Klein moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Subsections (1), (4), and (5) of section		
18	709.08, Florida Statutes, are amended to read:		
19	709.08 Durable power of attorney.--		
20	(1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable		
21	power of attorney is a written power of attorney by which a		
22	principal designates another as the principal's attorney in		
23	fact. The durable power of attorney must be in writing, must		
24	be executed with the same formalities required for the		
25	conveyance of real property by Florida law, and must contain		
26	the words: "This durable power of attorney is not affected by		
27	subsequent incapacity of the principal except as provided in		
28	s. 709.08, Florida Statutes"; or similar words that show the		
29	principal's intent that the authority conferred is exercisable		
30	notwithstanding the principal's subsequent incapacity, except		
31	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. A judicial determination that the principal lacks
30 the capacity to manage property pursuant to chapter 744 is not
31 required prior to the determination by the physicians and

Bill No. CS for SB 1066

Amendment No. ____

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

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

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

Personally Known OR Produced Identification

....(Type of Identification Produced)....

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

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

Bill No. CS for SB 1066

Amendment No. ____

1 acts.

2 (g)~~(e)~~ A durable power of attorney may provide that
3 the attorney in fact is not liable for any acts or decisions
4 made by the attorney in fact in good faith and under the terms
5 of the durable power of attorney.

6 (5) NOTICE.--

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

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

Bill No. CS for SB 1066

Amendment No. ____

1 court orders, a third party served with notice must be given
2 14 calendar days after service to act upon that notice. In the
3 case of a financial institution, notice must be served before
4 the occurrence of any of the events described in s. 674.303.

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

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7

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

9 And the title is amended as follows:

10 Delete everything before the enacting clause

11

12 and insert:

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A bill to be entitled

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An act relating to durable powers of attorney;
15 amending s. 709.08, F.S.; providing for durable
16 powers of attorney contingent upon a specified
17 condition; providing guidelines for such
18 powers; providing statutory forms for
19 affidavits to attest to specified condition;
20 providing an effective date.

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