

By Senator Joyner

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1 A bill to be entitled
2 An act relating to powers of attorney; providing
3 directives to the Division of Statutory Revision;
4 creating s. 709.2101, F.S.; providing a short title;
5 creating s. 709.2102, F.S.; providing definitions;
6 creating s. 709.2103, F.S.; providing applicability;
7 providing exceptions; creating s. 709.2104, F.S.;
8 providing for a durable power of attorney; creating s.
9 709.2105, F.S.; specifying the qualifications for an
10 agent; providing requirements for the execution of a
11 power of attorney; creating s. 709.2106, F.S.;
12 providing for the validity of powers of attorney
13 created by a certain date or in another jurisdiction;
14 providing for the validity of a military power of
15 attorney; providing for the validity of a photocopy or
16 electronic copy of a power of attorney; creating s.
17 709.2107, F.S.; providing for the meaning and
18 effectiveness of a power of attorney; creating s.
19 709.2108, F.S.; specifying when a power of attorney is
20 effective; providing limitations with respect to a
21 future power of attorney; creating s. 709.2109, F.S.;
22 providing for the termination or suspension of a power
23 of attorney or an agent's authority; creating s.
24 709.2110, F.S.; providing for the revocation of a
25 power of attorney; creating s. 709.2111, F.S.;
26 providing for the designation of co-agents and
27 successor agents; specifying the responsibility of a
28 successor agent for a predecessor agent; authorizing a
29 co-agent to delegate certain banking transaction to a

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30 co-agent; creating s. 709.2112, F.S.; providing for
31 the reimbursement and compensation of agents; creating
32 s. 709.2113, F.S.; providing for the agent's
33 acceptance of appointment; creating s. 709.2114, F.S.;
34 providing for an agent's duties; limiting an agent's
35 liability, absent a breach of duty; requiring that an
36 agent make certain disclosures upon order of a court,
37 upon the death of the principal, or under certain
38 other circumstances; creating s. 709.2115, F.S.;
39 providing for the exoneration of an agent; providing
40 exceptions; creating s. 709.2116, F.S.; providing for
41 judicial relief; authorizing the award of attorney's
42 fees and costs; providing for a judicial challenge to
43 an agent's exercise of power based on a conflict of
44 interest; specifying the burden of proof required to
45 overcome that challenge; creating s. 709.2117, F.S.;
46 providing for an agent's liability; creating s.
47 709.2118, F.S.; providing for an agent's resignation;
48 creating s. 709.2119, F.S.; providing for the
49 acceptance of and reliance upon a power of attorney;
50 authorizing a third party to require an affidavit;
51 providing for the validity of acts taken on behalf of
52 a principal who is reported as missing by a branch of
53 the United States Armed Forces; providing a
54 restriction on the conveyance of homestead property
55 held by such a principal; creating s. 709.2120, F.S.;
56 providing for liability if a third person refuses to
57 accept a power of attorney under certain
58 circumstances; providing for an award of damages and

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59 attorney's fees and costs; creating s. 709.2121, F.S.;

60 requiring that notice of certain events be provided to

61 an agent or other third person; specifying the form of

62 the notice and when it is effective; creating s.

63 709.2201, F.S.; providing for the authority of an

64 agent; providing limitations; providing that an

65 agent's authority extends to property later acquired

66 by the principal; creating s. 709.2202, F.S.;

67 specifying that certain authority requires separate

68 signed enumeration; restricting the amount of certain

69 gifts made by an agent; specifying certain acts that

70 do not require specific authority if the agent is

71 authorized to conduct banking transactions; limiting

72 the application of such provision; creating s.

73 709.2208, F.S.; providing for authority to conduct

74 banking and security transactions; creating s.

75 709.2301, F.S.; specifying the role of common law;

76 creating s. 709.2302, F.S.; providing for the

77 preemption of laws relating to financial institutions;

78 creating s. 709.2303, F.S.; providing for the

79 recognition of other remedies; creating s. 709.2401,

80 F.S.; specifying the relationship of the act to

81 federal law regulating electronic signatures; creating

82 s. 709.2402, F.S.; providing for powers of attorney

83 executed before the effective date of the act;

84 amending s. 736.0602, F.S.; conforming a cross-

85 reference; repealing s. 709.01, F.S., relating to the

86 authority of an agent when the principal is dead;

87 repealing s. 709.015, F.S., relating to the authority

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88 of an agent when the principal is missing; repealing
89 s. 709.08, F.S., relating to durable powers of
90 attorney; repealing s. 709.11, F.S., relating to a
91 deployment-contingent power of attorney; providing an
92 effective date.

93

94 Be It Enacted by the Legislature of the State of Florida:

95

96 Section 1. The Division of Statutory Revision is requested
97 to create part I of chapter 709, Florida Statutes, consisting of
98 ss. 709.02-709.07, entitled "POWERS OF APPOINTMENT."

99 Section 2. The Division of Statutory Revision is requested
100 to create part II of chapter 709, Florida Statutes, consisting
101 of ss. 709.2101-709.2402, entitled "POWERS OF ATTORNEY."

102 Section 3. Section 709.2101, Florida Statutes, is created
103 to read:

104 709.2101 Short title.—This part may be cited as the
105 "Florida Power of Attorney Act."

106 Section 4. Section 709.2102, Florida Statutes, is created
107 to read:

108 709.2102 Definitions.—As used in this part, the term:

109 (1) "Agent" means a person granted authority to act for a
110 principal under a power of attorney, whether denominated an
111 agent, attorney in fact, or otherwise. The term includes an
112 original agent, co-agent, and successor agent.

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

115 (3) "Electronic" means technology having electrical,
116 digital, magnetic, wireless, optical, electromagnetic, or

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117 similar capabilities.

118 (4) "Financial institution" has the same meaning as in s.
119 655.005.

120 (5) "Incapacity" means the inability of an individual to
121 take those actions necessary to obtain, administer, and dispose
122 of real and personal property, intangible property, business
123 property, benefits, and income.

124 (6) "Knowledge" means a person has actual knowledge of the
125 fact, has received a notice or notification of the fact, or has
126 reason to know the fact from all other facts and circumstances
127 known to the person at the time in question. An organization
128 that conducts activities through employees has notice or
129 knowledge of a fact involving a power of attorney only from the
130 time information was received by an employee having
131 responsibility to act on matters involving the power of
132 attorney, or would have had if brought to the employee's
133 attention if the organization had exercised reasonable
134 diligence. An organization exercises reasonable diligence if the
135 organization maintains reasonable routines for communicating
136 significant information to the employee having responsibility to
137 act on matters involving the power of attorney and there is
138 reasonable compliance with the routines. Reasonable diligence
139 does not require an employee to communicate information unless
140 the communication is part of the individual's regular duties or
141 the individual knows that a matter involving the power of
142 attorney would be materially affected by the information.

143 (7) "Power of attorney" means a writing that grants
144 authority to an agent to act in the place of the principal,
145 whether or not the term is used in that writing.

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146 (8) "Presently exercisable general power of appointment"
147 means, with respect to property or a property interest subject
148 to a power of appointment, power exercisable at the time in
149 question to vest absolute ownership in the principal
150 individually, the principal's estate, the principal's creditors,
151 or the creditors of the principal's estate. The term includes a
152 power of appointment not exercisable until the occurrence of a
153 specified event, the satisfaction of an ascertainable standard,
154 or the passage of a specified period only after the occurrence
155 of the specified event, the satisfaction of the ascertainable
156 standard, or the passage of the specified period. The term does
157 not include a power exercisable in a fiduciary capacity or only
158 by will.

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

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

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

167 (12) "Sign" means having present intent to authenticate or
168 adopt a record to:

169 (a) Execute or adopt a tangible symbol; or

170 (b) Attach to, or logically associate with the record an
171 electronic sound, symbol, or process.

172 (13) "Third person" means any person other than the
173 principal, or the agent in the agent's capacity as agent.

174 Section 5. Section 709.2103, Florida Statutes, is created

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175 to read:

176 709.2103 Applicability.—This part applies to all powers of
177 attorney except:178 (1) A proxy or other delegation to exercise voting rights
179 or management rights with respect to an entity;180 (2) A power created on a form prescribed by a government or
181 governmental subdivision, agency, or instrumentality for a
182 governmental purpose;183 (3) A power to the extent it is coupled with an interest in
184 the subject of the power, including a power given to or for the
185 benefit of a creditor in connection with a credit transaction;
186 and187 (4) A power created by a person other than an individual.188 Section 6. Section 709.2104, Florida Statutes, is created
189 to read:190 709.2104 Durable power of attorney.—Except as otherwise
191 provided under this part, a power of attorney is durable if it
192 contains the words: "This durable power of attorney is not
193 terminated by subsequent incapacity of the principal except as
194 provided in chapter 709, Florida Statutes," or similar words
195 that show the principal's intent that the authority conferred is
196 exercisable notwithstanding the principal's subsequent
197 incapacity.198 Section 7. Section 709.2105, Florida Statutes, is created
199 to read:200 709.2105 Qualifications of agent; execution of power of
201 attorney.—202 (1) The agent must be a natural person who is 18 years of
203 age or older or a financial institution that has trust powers,

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204 has a place of business in this state, and is authorized to
205 conduct trust business in this state.

206 (2) A power of attorney must be signed by the principal and
207 by two subscribing witnesses and be acknowledged by the
208 principal before a notary public or as otherwise provided in s.
209 695.03.

210 Section 8. Section 709.2106, Florida Statutes, is created
211 to read:

212 709.2106 Validity of power of attorney.—

213 (1) A power of attorney executed on or after October 1,
214 2011, is valid if its execution complies with s. 709.2103.

215 (2) A power of attorney executed before October 1, 2011, is
216 valid if its execution complied with the law of this state at
217 the time of execution.

218 (3) A power of attorney executed in another state which
219 does not comply with the execution requirements of this part is
220 valid in this state if, when the power of attorney was executed,
221 the power of attorney and its execution complied with the law of
222 the state of execution. A third person who is requested to
223 accept a power of attorney that is valid in this state solely
224 because of this subsection may in good faith request, and rely
225 upon, without further investigation, an opinion of counsel as to
226 any matter of law concerning the power of attorney, including
227 the due execution and validity of the power of attorney. An
228 opinion of counsel requested under this subsection must be
229 provided at the principal's expense. A third person may accept a
230 power of attorney that is valid in this state solely because of
231 this subsection if the agent does not provide the requested
232 opinion of counsel, and in such case, a third person has no

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233 liability for refusing to accept the power of attorney. This
234 subsection does not affect any other rights of a third person
235 who is requested to accept the power of attorney under this
236 part, or any other provisions of applicable law.

237 (4) A military power of attorney is valid if it is executed
238 in accordance with 10 U.S.C. s. 1044b, as amended. A deployment-
239 contingent power of attorney may be signed in advance, is
240 effective upon the deployment of the principal, and shall be
241 afforded full force and effect by the courts of this state.

242 (5) Except as otherwise provided in the power of attorney,
243 a photocopy or electronically transmitted copy of an original
244 power of attorney has the same effect as the original.

245 Section 9. Section 709.2107, Florida Statutes, is created
246 to read:

247 709.2107 Meaning and effectiveness of power of attorney.-
248 The meaning and effectiveness of a power of attorney is governed
249 by this part if the power of attorney:

250 (1) Is used in this state; or

251 (2) States that it is to be governed by the laws of this
252 state.

253 Section 10. Section 709.2108, Florida Statutes, is created
254 to read:

255 709.2108 When power of attorney is effective.-

256 (1) Except as provided in this section, a power of attorney
257 is exercisable when executed.

258 (2) If a power of attorney executed before October 1, 2011,
259 is conditioned on the principal's lack of capacity to manage
260 property as defined in s. 744.102(12) (a), and the power of
261 attorney has not become exercisable before that date, the power

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262 of attorney is exercisable upon the delivery of the affidavit of
263 a physician who has primary responsibility for the treatment and
264 care of the principal and who is licensed to practice medicine
265 pursuant to chapter 458 or chapter 459 as of the date of the
266 affidavit. The affidavit must state where the physician is
267 licensed to practice medicine, that the physician is the primary
268 physician who has responsibility for the treatment and care of
269 the principal, and that the physician believes that the
270 principal lacks the capacity to manage property.

271 (3) Except as provided in subsection (2) and section
272 709.2106(4), a power of attorney is ineffective if the power of
273 attorney provides that it is to become effective at a future
274 date or upon the occurrence of a future event or contingency.

275 Section 11. Section 709.2109, Florida Statutes, is created
276 to read:

277 709.2109 Termination or suspension of power of attorney or
278 agent's authority.—

279 (1) A power of attorney terminates when:

280 (a) The principal dies;

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

283 (c) The principal is adjudicated totally or partially
284 incapacitated by a court, unless the court determines that
285 certain authority granted by the power of attorney is to be
286 exercisable by the agent;

287 (d) The principal revokes the power of attorney;

288 (e) The power of attorney provides that it terminates;

289 (f) The purpose of the power of attorney is accomplished;

290 or

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291 (g) The agent's authority terminates and the power of
292 attorney does not provide for another agent to act under the
293 power of attorney.

294 (2) An agent's authority is exercisable until the authority
295 terminates. An agent's authority terminates when:

296 (a) The agent dies, becomes incapacitated, resigns, or is
297 removed by a court;

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

301 (c) The power of attorney terminates.

302 (3) If any person initiates judicial proceedings to
303 determine the principal's incapacity or for the appointment of a
304 guardian advocate, the authority granted under the power of
305 attorney is suspended until the petition is dismissed or
306 withdrawn or the court enters an order authorizing the agent to
307 exercise one or more powers granted under the power of attorney.

308 (a) If an emergency arises after initiation of proceedings
309 to determine incapacity and before adjudication regarding the
310 principal's capacity, the agent may petition the court in which
311 the proceeding is pending for authorization to exercise a power
312 granted under the power of attorney. The petition must set forth
313 the nature of the emergency, the property or matter involved,
314 and the power to be exercised by the agent.

315 (b) Notwithstanding the provisions of this section, unless
316 otherwise ordered by the court, a proceeding to determine
317 incapacity does not affect the authority of the agent to make
318 health care decisions for the principal, including, but not
319 limited to, those provided in chapter 765. If the principal has

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320 executed a health care advance directive designating a health
321 care surrogate, the terms of the directive control if the
322 directive and the power of attorney are in conflict unless the
323 power of attorney is later executed and expressly states
324 otherwise.

325 (4) Termination or suspension of an agent's authority or of
326 a power of attorney is not effective as to an agent who, without
327 knowledge of the termination or suspension, acts in good faith
328 under the power of attorney. An act so performed, unless
329 otherwise invalid or unenforceable, binds the principal and the
330 principal's successors in interest.

331 Section 12. Section 709.2110, Florida Statutes, is created
332 to read:

333 709.2110 Revocation of power of attorney.-

334 (1) A principal may revoke a power of attorney by
335 expressing the revocation in a subsequently executed power of
336 attorney or other writing signed by the principal. The principal
337 may give notice of the revocation to an agent who has accepted
338 authority under the revoked power of attorney.

339 (2) Except as provided in subsection (1), the execution of
340 a power of attorney does not revoke a power of attorney
341 previously executed by the principal.

342 Section 13. Section 709.2111, Florida Statutes, is created
343 to read:

344 709.2111 Co-agents and successor agents.-

345 (1) A principal may designate two or more persons to act as
346 co-agents. Unless the power of attorney otherwise provides, each
347 co-agent may exercise its authority independently.

348 (2) A principal may designate one or more successor agents

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349 to act if an agent resigns, dies, becomes incapacitated, is not
350 qualified to serve, or declines to serve. Unless the power of
351 attorney otherwise provides, a successor agent:

352 (a) Has the same authority as that granted to the original
353 agent; and

354 (b) May not act until the predecessor agents have resigned,
355 have died, have become incapacitated, are no longer qualified to
356 serve, or have declined to serve.

357 (3) Except as otherwise provided in the power of attorney
358 and subsection (4), an agent who does not participate in or
359 conceal a breach of fiduciary duty committed by another agent,
360 including a predecessor agent, is not liable for the actions or
361 omissions of the other agent.

362 (4) An agent who has actual knowledge of a breach or
363 imminent breach of fiduciary duty by another agent, including a
364 predecessor agent, must take any action reasonably appropriate
365 in the circumstances to safeguard the principal's best
366 interests. If the agent in good faith believes that the
367 principal is not incapacitated, giving notice to the principal
368 is a sufficient action. An agent who fails to take action as
369 required by this subsection is liable to the principal for the
370 principal's reasonably foreseeable damages that could have been
371 avoided if the agent had taken such action.

372 (5) A successor agent does not have a duty to review the
373 conduct or decisions of a predecessor agent. Except as provided
374 in subsection (4), a successor agent does not have a duty to
375 institute any proceeding against a predecessor agent, or to file
376 any claim against a predecessor agent's estate, for any of the
377 predecessor agent's actions or omissions as agent.

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378 (6) If a power of attorney requires that two or more
379 persons act together as co-agents, notwithstanding the
380 requirement that they act together, one or more of the agents
381 may delegate to a co-agent the authority to conduct banking
382 transactions as provided in s. 709.2208(1), whether the
383 authority to conduct banking transactions is specifically
384 enumerated or incorporated by reference to that section in the
385 power of attorney.

386 Section 14. Section 709.2112, Florida Statutes, is created
387 to read:

388 709.2112 Reimbursement and compensation of agent.—

389 (1) Unless the power of attorney otherwise provides, an
390 agent is entitled to reimbursement of expenses reasonably
391 incurred on behalf of the principal.

392 (2) Unless the power of attorney otherwise provides, a
393 qualified agent is entitled to compensation that is reasonable
394 under the circumstances.

395 (3) Notwithstanding any provision in the power of attorney,
396 an agent may not be paid compensation unless the agent is a
397 qualified agent.

398 (4) For purposes of this section, the term "qualified
399 agent" means an agent who is the spouse of the principal, an
400 heir of the principal within the meaning of s. 732.103, a
401 financial institution that has trust powers and a place of
402 business in this state, an attorney or certified public
403 accountant who is licensed in this state, or a natural person
404 who is a resident of this state and who has never been an agent
405 for more than three principals at the same time.

406 Section 15. Section 709.2113, Florida Statutes, is created

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407 to read:

408 709.2113 Agent's acceptance of appointment.—Except as
409 otherwise provided in the power of attorney, a person accepts
410 appointment as an agent by exercising authority or performing
411 duties as an agent or by any other assertion or conduct
412 indicating acceptance. The scope of an agent's acceptance is
413 limited to those aspects of the power of attorney for which the
414 agent's assertions or conduct reasonably manifests acceptance.

415 Section 16. Section 709.2114, Florida Statutes, is created
416 to read:

417 709.2114 Agent's duties.—

418 (1) An agent is a fiduciary. Notwithstanding the provisions
419 in the power of attorney, an agent who has accepted appointment:

420 (a) Must act only within the scope of authority granted in
421 the power of attorney. In exercising that authority, the agent:

422 1. May not act contrary to the principal's reasonable
423 expectations actually known by the agent;

424 2. Must act in good faith;

425 3. May not act in a manner that is contrary to the
426 principal's best interest, except as provided in paragraph

427 (2) (d) and s. 709.2202; and

428 4. To the extent actually known by the agent, must attempt
429 to preserve the principal's estate plan if preserving the plan
430 is consistent with the principal's best interest based on all
431 relevant factors, including:

432 a. The value and nature of the principal's property;

433 b. The principal's foreseeable obligations and need for
434 maintenance;

435 c. Minimization of taxes, including income, estate,

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- 436 inheritance, generation-skipping transfer, and gift taxes;
437 d. Eligibility for a benefit, a program, or assistance
438 under a statute or rule; and
439 e. The principal's personal history of making or joining in
440 making gifts;
441 (b) May not delegate authority to a third person except as
442 provided in s. 518.112;
443 (c) Must keep a record of all receipts, disbursements, and
444 transactions made on behalf of the principal; and
445 (d) Must create and maintain an accurate inventory each
446 time the agent accesses the principal's safe-deposit box, if the
447 power of attorney authorizes the agent to access the box.
448 (2) Except as otherwise provided in the power of attorney,
449 an agent who has accepted appointment shall:
450 (a) Act loyally for the sole benefit of the principal;
451 (b) Act so as not to create a conflict of interest that
452 impairs the agent's ability to act impartially in the
453 principal's best interest;
454 (c) Act with the care, competence, and diligence ordinarily
455 exercised by agents in similar circumstances; and
456 (d) Cooperate with a person who has authority to make
457 health care decisions for the principal in order to carry out
458 the principal's reasonable expectations to the extent actually
459 known by the agent and, otherwise, act in the principal's best
460 interest.
461 (3) An agent who acts in good faith is not liable to any
462 beneficiary of the principal's estate plan for failure to
463 preserve the plan.
464 (4) If an agent is selected by the principal because of

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465 special skills or expertise possessed by the agent or in
466 reliance on the agent's representation that the agent has
467 special skills or expertise, the special skills or expertise
468 must be considered in determining whether the agent has acted
469 with care, competence, and diligence under the circumstances.

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

472 (6) Except as otherwise provided in the power of attorney,
473 an agent is not required to disclose receipts, disbursements,
474 transactions conducted on behalf of the principal, or safe-
475 deposit box inventories, unless ordered by a court or requested
476 by the principal, a court-appointed guardian, another fiduciary
477 acting for the principal, a governmental agency having authority
478 to protect the welfare of the principal, or, upon the death of
479 the principal, by the personal representative or successor in
480 interest of the principal's estate. If requested, the agent must
481 comply with the request within 60 days or provide a writing or
482 other record substantiating why additional time is needed and
483 comply with the request within an additional 60 days.

484 Section 17. Section 709.2115, Florida Statutes, is created
485 to read:

486 709.2115 Exoneration of agent.—A power of attorney may
487 provide that the agent is not liable for any acts or decisions
488 made by the agent in good faith and under the power of attorney,
489 except to the extent the provision:

490 (1) Relieves the agent of liability for breach of a duty
491 committed dishonestly, with improper motive, or with reckless
492 indifference to the purposes of the power of attorney or the
493 best interest of the principal; or

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

496 Section 18. Section 709.2116, Florida Statutes, is created
497 to read:

498 709.2116 Judicial relief; conflicts of interests.-

499 (1) A court may construe or enforce a power of attorney,
500 review the agent's conduct, terminate the agent's authority,
501 remove the agent, and grant other appropriate relief.

502 (2) The following persons may petition the court:

503 (a) The principal or the agent, including any nominated
504 successor agent.

505 (b) A guardian, conservator, trustee, or other fiduciary
506 acting for the principal or the principal's estate.

507 (c) A person authorized to make health care decisions for
508 the principal if the health care of the principal is affected by
509 the actions of the agent.

510 (d) Any other interested person if the person demonstrates
511 to the court's satisfaction that the person is interested in the
512 welfare of the principal and has a good faith belief that the
513 court's intervention is necessary.

514 (e) A governmental agency having regulatory authority to
515 protect the welfare of the principal.

516 (f) A person asked to honor the power of attorney.

517 (3) In any proceeding commenced by filing a petition under
518 this section, including, but not limited to, the unreasonable
519 refusal of a third person to allow an agent to act pursuant to
520 the power of attorney, and in challenges to the proper exercise
521 of authority by the agent, the court shall award reasonable
522 attorney's fees and costs.

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523 (4) If an agent's exercise of a power is challenged in a
524 judicial proceeding brought by or on behalf of the principal on
525 the grounds that the exercise of the power was affected by a
526 conflict of interest, and evidence is presented that the agent
527 or an affiliate of the agent had a personal interest in the
528 exercise of the power, the agent or affiliate has the burden of
529 proving, by clear and convincing evidence that the agent acted:

530 (a) Solely in the interest of the principal; or

531 (b) In good faith in the principal's best interest, and the
532 conflict of interest was expressly authorized in the power of
533 attorney.

534 (5) For purposes of subsection (4):

535 (a) A provision authorizing an agent to engage in a
536 transaction affected by a conflict of interest which is inserted
537 into a power of attorney as the result of the abuse of a
538 fiduciary or confidential relationship with the principal by the
539 agent or the agent's affiliate is invalid.

540 (b) Affiliates of an agent include:

541 1. The agent's spouse;

542 2. The agent's descendants, siblings, parents, or their
543 spouses;

544 3. A corporation or other entity in which the agent, or a
545 person who owns a significant interest in the agent, has an
546 interest that might affect the agent's best judgment;

547 4. A person or entity that owns a significant interest in
548 the agent; or

549 5. The agent acting in a fiduciary capacity for someone
550 other than the principal.

551 Section 19. Section 709.2117, Florida Statutes, is created

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552 to read:

553 709.2117 Agent's liability.—An agent who violates this part
554 is liable to the principal or the principal's successors in
555 interest for the amount required to:

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

558 (2) Reimburse the principal or the principal's successors
559 in interest for the attorney's fees and costs paid from the
560 principal's funds on the agent's behalf in defense of the
561 agent's actions.

562 Section 20. Section 709.2118, Florida Statutes, is created
563 to read:

564 709.2118 Agent's resignation.—Unless the power of attorney
565 provides a different method for an agent's resignation, an agent
566 may resign by giving notice to the principal, to the guardian if
567 the principal is incapacitated and one has been appointed for
568 the principal, and to any co-agent, or if none, the next
569 successor agent.

570 Section 21. Section 709.2119, Florida Statutes, is created
571 to read:

572 709.2119 Acceptance of and reliance upon power of
573 attorney.—

574 (1) (a) A third person who in good faith accepts a power of
575 attorney that appears to be executed in accordance with this
576 part may rely upon the power of attorney and may enforce an
577 authorized transaction against the principal's property as if:

578 1. The power of attorney were genuine, valid, and still in
579 effect;

580 2. The agent's authority were genuine, valid, and still in

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581 effect; and

582 3. The authority of the officer executing for or on behalf
583 of a financial institution that has trust powers and acting as
584 agent is genuine, valid, and still in effect.

585 (b) For purposes of this subsection, and without limiting
586 what constitutes good faith, a third person does not accept a
587 power of attorney in good faith if the third person has notice
588 that:

589 1. The power of attorney is void, invalid, or terminated;
590 or

591 2. The purported agent's authority is void, invalid,
592 suspended, or terminated.

593 (2) A third person may require:

594 (a) An agent to execute an affidavit stating where the
595 principal is domiciled; that the principal is not deceased; that
596 there has been no revocation, or partial or complete termination
597 by adjudication of incapacity or by the occurrence of an event
598 referenced in the power of attorney; that there has been no
599 suspension by initiation of proceedings to determine incapacity,
600 or to appoint a guardian, of the principal; and, if the affiant
601 is a successor agent, the reasons for the unavailability of the
602 predecessor agents, if any, at the time the authority is
603 exercised.

604 (b) An officer of a financial institution acting as agent
605 to execute a separate affidavit, or include in the form of the
606 affidavit, the officer's title and a statement that the officer
607 has full authority to perform all acts and enter into all
608 transactions authorized by the power of attorney for and on
609 behalf of the financial institution in its capacity as agent. A

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610 written affidavit executed by the agent under this subsection
611 may, but need not, be in the following form:

612
613 STATE OF.....

614 COUNTY OF.....

615
616 Before me, the undersigned authority, personally appeared
617 ...(attorney in fact)... ("Affiant"), who swore or affirmed
618 that:

619 1. Affiant is the attorney in fact named in the Durable
620 Power of Attorney executed by ...(principal)... ("Principal") on
621 ...(date)....

622 2. This Power of Attorney is currently exercisable by
623 Affiant. The principal is domiciled in ...(insert name of state,
624 territory, or foreign country)....

625 3. To the best of the Affiant's knowledge after diligent
626 search and inquiry:

627 a. The Principal is not deceased;

628 b. Affiant's authority has not been suspended by initiation
629 of proceedings to determine incapacity or to appoint a guardian
630 or a guardian advocate; and

631 c. There has been no revocation, or partial or complete
632 termination, of the power of attorney or of the Affiant's
633 authority.

634 4. The Affiant is acting within the scope of authority
635 granted in the power of attorney.

636 5. The Affiant is the successor to ...(insert name of
637 predecessor agent)..., who has resigned, died, become
638 incapacitated, is no longer qualified to serve, has declined to

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639 serve as agent, or is otherwise unable to act, if applicable.

640 6. Affiant agrees not to exercise any powers granted by the
641 Durable Power of Attorney if Affiant attains knowledge that it
642 has been revoked, has been partially or completely terminated or
643 suspended, or is no longer valid because of the death or
644 adjudication of incapacity of the Principal.

645
646
647 ... (Affiant)...

648
649 Sworn to (or affirmed) and subscribed before me this
650 day of ...(month)..., ...(year)..., by ...(name of person making
651 statement)...

652
653 ...(Signature of Notary Public-State of Florida)...

654
655 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

656
657 Personally Known OR Produced Identification

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

659
660 (3) A third person who is asked to accept a power of
661 attorney that appears to be executed in accordance with s.
662 709.2103 may in good faith request, and rely upon, without
663 further investigation:

664 (a) A verified English translation of the power of attorney
665 if the power of attorney contains, in whole or in part, language
666 other than English;

667 (b) An opinion of counsel as to any matter of law

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668 concerning the power of attorney if the third person making the
669 request provides in a writing or other record the reason for the
670 request; or

671 (c) The affidavit described in subsection (2).

672 (4) An English translation or an opinion of counsel
673 requested under this section must be provided at the principal's
674 expense unless the request is made after the time specified in
675 s. 709.2120(1) for acceptance or rejection of the power of
676 attorney.

677 (5) Third persons who act in reliance upon the authority
678 granted to an agent and in accordance with the instructions of
679 the agent shall be held harmless by the principal from any loss
680 suffered or liability incurred as a result of actions taken
681 before the receipt of written notice as provided in s. 709.2121.
682 A third person who acts in good faith upon any representation,
683 direction, decision, or act of the agent is not liable to the
684 principal or the principal's estate, beneficiaries, or joint
685 owners for those acts.

686 (6) The acts of an agent under a power of attorney are as
687 valid and binding on the principal or the principal's estate as
688 if the principal were alive and competent if, in connection with
689 any activity pertaining to hostilities in which the United
690 States is then engaged, the principal is officially listed or
691 reported by a branch of the United States Armed Forces in a
692 missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s.
693 5561, regardless of whether the principal is dead, alive, or
694 incompetent. Homestead property held as tenants by the
695 entireties may not be conveyed by a power of attorney regulated
696 under this provision until 1 year after the first official

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697 report or listing of the principal as missing or missing in
698 action. An affidavit of an officer of the Armed Forces having
699 maintenance and control of the records pertaining to those
700 missing or missing in action that the principal has been in that
701 status for a given period is conclusive presumption of the fact.

702 Section 22. Section 709.2120, Florida Statutes, is created
703 to read:

704 709.2120 Refusal to accept power of attorney.-

705 (1) Except as provided in subsection (2):

706 (a) A third person must accept or reject a power of
707 attorney within a reasonable time. A third person who rejects a
708 power of attorney must state in writing the reason for the
709 rejection.

710 (b) Four days, excluding Saturdays, Sundays, and legal
711 holidays, are presumed to be a reasonable time for a financial
712 institution to accept or reject a power of attorney with respect
713 to:

714 1. A banking transaction, if the power of attorney
715 expressly contains authority to conduct banking transactions
716 pursuant to s. 709.2208(1); or

717 2. A security transaction, if the power of attorney
718 expressly contains authority to conduct security transactions
719 pursuant to s. 709.2208(2).

720 (c) A third person may not require an additional or
721 different form of power of attorney for authority granted in the
722 power of attorney presented.

723 (2) A third person is not required to accept a power of
724 attorney if:

725 (a) The third person is not otherwise required to engage in

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726 a transaction with the principal in the same circumstances;

727 (b) The third person has knowledge of the termination or
728 suspension of the agent's authority or of the power of attorney
729 before exercising the power;

730 (c) A timely request by the third person for an affidavit,
731 English translation, or opinion of counsel under s. 709.2119(4)
732 is refused by the agent;

733 (d) Except as provided in paragraph (b), the third person
734 believes in good faith that the power is not valid or that the
735 agent does not have authority to perform the act requested; or

736 (e) The third person makes, or has knowledge that another
737 person has made, a report to the local adult protective services
738 office stating a good faith belief that the principal may be
739 subject to physical or financial abuse, neglect, exploitation,
740 or abandonment by the agent or a person acting for or with the
741 agent.

742 (3) A third person who, in violation of this section,
743 refuses to accept a power of attorney is subject to:

744 (a) A court order mandating acceptance of the power of
745 attorney; and

746 (b) Liability for damages, including reasonable attorney's
747 fees and costs, incurred in any action or proceeding that
748 confirms, for the purpose tendered, the validity of the power of
749 attorney or mandates acceptance of the power of attorney.

750 Section 23. Section 709.2121, Florida Statutes, is created
751 to read:

752 709.2121 Notice.—

753 (1) A notice, including a notice of revocation, notice of
754 partial or complete termination by adjudication of incapacity or

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755 by the occurrence of an event referenced in the power of
756 attorney, notice of death of the principal, notice of suspension
757 by initiation of proceedings to determine incapacity or to
758 appoint a guardian, or other notice, is not effective until
759 written notice is provided to the agent or any third persons
760 relying upon a power of attorney.

761 (2) Notice must be in writing and must be accomplished in a
762 manner reasonably suitable under the circumstances and likely to
763 result in receipt of the notice or document. Permissible methods
764 of notice or for sending a document include first-class mail,
765 personal delivery, delivery to the person's last known place of
766 residence or place of business, or a properly directed facsimile
767 or other electronic message.

768 (3) Notice to a financial institution must contain the
769 name, address, and the last four digits of the principal's
770 taxpayer identification number and be directed to an officer or
771 a manager of the financial institution in this state.

772 (4) Notice is effective when given, except that notice upon
773 a financial institution, brokerage company, or title insurance
774 company is not effective until 5 days, excluding Saturdays,
775 Sundays, and legal holidays, after it is received.

776 Section 24. Section 709.2201, Florida Statutes, is created
777 to read:

778 709.2201 Authority of agent.—

779 (1) Except as provided in this section or other applicable
780 law, an agent may only exercise authority specifically granted
781 to the agent in the power of attorney and any authority
782 reasonably necessary to give effect to that express grant of
783 specific authority. General provisions in a power of attorney

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784 which do not identify the specific authority granted, such as
785 provisions purporting to give the agent authority to do all acts
786 that the principal can do, is not an express grant of specific
787 authority and does not grant any authority to the agent. Court
788 approval is not required for any action of the agent in
789 furtherance of an express grant of specific authority.

790 (2) As a confirmation of the law in effect in this state
791 when this part became effective, such authorization may include,
792 without limitation, authority to:

793 (a) Execute stock powers or similar documents on behalf of
794 the principal and delegate to a transfer agent or similar person
795 the authority to register any stocks, bonds, or other securities
796 into or out of the principal's or nominee's name.

797 (b) Convey or mortgage homestead property. However, if the
798 principal is married, the agent may not mortgage or convey
799 homestead property without joinder of the principal's spouse or
800 the spouse's guardian. Joinder by a spouse may be accomplished
801 by the exercise of authority in a power of attorney executed by
802 the joining spouse, and either spouse may appoint the other as
803 his or her agent.

804 (c) If such authority is specifically granted in a durable
805 power of attorney, make all health care decisions on behalf of
806 the principal, including, but not limited to, those set forth in
807 chapter 765.

808 (3) Notwithstanding the provisions of this section, an
809 agent may not:

810 (a) Perform duties under a contract that requires the
811 exercise of personal services of the principal;

812 (b) Make any affidavit as to the personal knowledge of the

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813 principal;

814 (c) Vote in any public election on behalf of the principal;

815 (d) Execute or revoke any will or codicil for the

816 principal; or

817 (e) Exercise powers and authority granted to the principal
818 as trustee or as court-appointed fiduciary.

819 (4) Subject to s. 709.2202, if the subjects over which
820 authority is granted in a power of attorney are similar or
821 overlap, the broadest authority controls.

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

828 (6) An act performed by an agent pursuant to a power of
829 attorney has the same effect and inures to the benefit of and
830 binds the principal and the principal's successors in interest
831 as if the principal had performed the act.

832 Section 25. Section 709.2202, Florida Statutes, is created
833 to read:

834 709.2202 Authority that requires separate signed
835 enumeration.—

836 (1) Notwithstanding s. 709.2201, an agent may exercise the
837 following authority only if the principal signed or initialed
838 next to each specific enumeration of the authority, the exercise
839 of the authority is consistent with the agent's duties under s.
840 709.2114, and the exercise is not otherwise prohibited by
841 another agreement or instrument:

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- 842 (a) Create an inter vivos trust;
843 (b) With respect to a trust created by or on behalf of the
844 principal, amend, modify, revoke, or terminate the trust, but
845 only if the trust instrument explicitly provides for amendment,
846 modification, revocation, or termination by the settlor's agent;
847 (c) Make a gift, subject to subsection (3);
848 (d) Create or change rights of survivorship;
849 (e) Create or change a beneficiary designation;
850 (f) Waive the principal's right to be a beneficiary of a
851 joint and survivor annuity, including a survivor benefit under a
852 retirement plan; or
853 (g) Disclaim property and powers of appointment.
854 (2) Notwithstanding a grant of authority to do an act
855 described in subsection (1), unless the power of attorney
856 otherwise provides, an agent who is not an ancestor, spouse, or
857 descendant of the principal may not exercise authority to create
858 in the agent, or in an individual to whom the agent owes a legal
859 obligation of support, an interest in the principal's property,
860 whether by gift, right of survivorship, beneficiary designation,
861 disclaimer, or otherwise.
862 (3) Unless the power of attorney otherwise provides, a
863 provision in a power of attorney granting general authority with
864 respect to gifts authorizes the agent to only:
865 (a) Make outright to, or for the benefit of, a person a
866 gift of any of the principal's property, including by the
867 exercise of a presently exercisable general power of appointment
868 held by the principal, in an amount per donee not to exceed the
869 annual dollar limits of the federal gift tax exclusion under 26
870 U.S.C. s. 2503(b), as amended, without regard to whether the

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871 federal gift tax exclusion applies to the gift, or if the
872 principal's spouse agrees to consent to a split gift pursuant to
873 26 U.S.C. s. 2513, as amended, in an amount per donee not to
874 exceed twice the annual federal gift tax exclusion limit; and
875 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to
876 the splitting of a gift made by the principal's spouse in an
877 amount per donee not to exceed the aggregate annual gift tax
878 exclusions for both spouses.

879 (4) Notwithstanding subsection (1), if a power of attorney
880 is otherwise sufficient to grant an agent authority to conduct
881 banking transactions, as provided in s. 709.2208(1), conduct
882 investment transactions as provided in s. 709.2208(2), or
883 otherwise make additions to or withdrawals from an account of
884 the principal, making a deposit to or withdrawal from an
885 insurance policy, retirement account, individual retirement
886 account, benefit plan, bank account, or any other account held
887 jointly or otherwise held in survivorship or payable on death,
888 is not considered to be a change to the survivorship feature or
889 beneficiary designation, and no further specific authority is
890 required for the agent to exercise such authority. A bank or
891 other financial institution does not have a duty to inquire as
892 to the appropriateness of the agent's exercise of that authority
893 and is not liable to the principal or any other person for
894 actions taken in good faith reliance on the appropriateness of
895 the agent's actions. This subsection does not eliminate the
896 agent's fiduciary duties to the principal with respect to any
897 exercise of the power of attorney.

898 (5) This section does not apply to a power of attorney
899 executed before October 1, 2011.

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900 Section 26. Section 709.2208, Florida Statutes, is created
901 to read:

902 709.2208 Banks and other financial institutions.-

903 (1) A power of attorney that includes the statement that
904 the agent has "authority to conduct banking transactions as
905 provided in section 709.2208(1), Florida Statutes" grants
906 general authority to the agent to engage in the following
907 transactions with financial institutions without additional
908 specific enumeration in the power of attorney:

909 (a) Establish, continue, modify, or terminate an account or
910 other banking arrangement with a financial institution.

911 (b) Contract for services available from a financial
912 institution, including renting a safe-deposit box or space in a
913 vault.

914 (c) Withdraw, by check, order, electronic funds transfer,
915 or otherwise, money or property of the principal deposited with
916 or left in the custody of a financial institution.

917 (d) Receive statements of account, vouchers, notices, and
918 similar documents from a financial institution and act with
919 respect to them.

920 (e) Purchase cashier's checks, official checks, counter
921 checks, bank drafts, money orders, and similar instruments.

922 (f) Endorse and negotiate checks, cashier's checks,
923 official checks, drafts, and other negotiable paper of the
924 principal or payable to the principal or the principal's order,
925 transfer money, receive the cash or other proceeds of those
926 transactions, and accept a draft drawn by a person upon the
927 principal and pay it when due.

928 (g) Apply for, receive, and use debit cards, electronic

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929 transaction authorizations, and traveler's checks from a
930 financial institution.

931 (h) Use, charge, or draw upon any line of credit, credit
932 card, or other credit established by the principal with a
933 financial institution.

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

937 (2) A power of attorney that specifically includes the
938 statement that the agent has "authority to conduct investment
939 transactions as provided in section 709.2208(2), Florida
940 Statutes" grants general authority to the agent with respect to
941 securities held by financial institutions to take the following
942 actions without additional specific enumeration in the power of
943 attorney:

944 (a) Buy, sell, and exchange investment instruments.

945 (b) Establish, continue, modify, or terminate an account
946 with respect to investment instruments.

947 (c) Pledge investment instruments as security to borrow,
948 pay, renew, or extend the time of payment of a debt of the
949 principal.

950 (d) Receive certificates and other evidences of ownership
951 with respect to investment instruments.

952 (e) Exercise voting rights with respect to investment
953 instruments in person or by proxy, enter into voting trusts, and
954 consent to limitations on the right to vote.

955 (f) Sell commodity futures contracts and call and put
956 options on stocks and stock indexes.

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958 For purposes of this subsection, the term "investment
959 instruments" means stocks, bonds, mutual funds, and all other
960 types of securities and financial instruments, whether held
961 directly, indirectly, or in any other manner, including shares
962 or interests in a private investment fund, including, but not
963 limited to, a private investment fund organized as a limited
964 partnership, a limited liability company, a statutory or common
965 law business trust, a statutory trust, or a real estate
966 investment trust, joint venture, or any other general or limited
967 partnership; derivatives or other interests of any nature in
968 securities such as options, options on futures, and variable
969 forward contracts; mutual funds; common trust funds; money
970 market funds; hedge funds; private equity or venture capital
971 funds; insurance contracts; and other entities or vehicles
972 investing in securities or interests in securities whether
973 registered or otherwise, except commodity futures contracts and
974 call and put options on stocks and stock indexes.

975 Section 27. Section 709.2301, Florida Statutes, is created
976 to read:

977 709.2301 Principles of law and equity.—The common law of
978 agency and principles of equity supplement this part, except as
979 modified by this part or other state law.

980 Section 28. Section 709.2302, Florida Statutes, is created
981 to read:

982 709.2302 Laws applicable to financial institutions and
983 entities.—This part does not supersede any other law applicable
984 to financial institutions or other entities, and that law
985 controls if inconsistent with this part.

986 Section 29. Section 709.2303, Florida Statutes, is created

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987 to read:

988 709.2303 Remedies under other law.—The remedies under this
989 part are not exclusive and do not abrogate any right or remedy
990 under any other law other than this part.

991 Section 30. Section 709.2401, Florida Statutes, is created
992 to read:

993 709.2401 Relation to electronic signatures in federal law.—
994 This part modifies, limits, and supersedes the federal
995 Electronic Signatures in Global and National Commerce Act, 15
996 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede
997 s. 101(c) of that act, or authorize electronic delivery of any
998 of the notices described in s. 103(b) of that act.

999 Section 31. Section 709.2402, Florida Statutes, is created
1000 to read:

1001 709.2402 Effect on existing powers of attorney.—Except as
1002 otherwise provided in this part:

1003 (1) This part applies to a power of attorney created
1004 before, on, or after October 1, 2011, and to acts of the agent
1005 occurring on or after that date.

1006 (2) An act of the agent occurring before October 1, 2011,
1007 is not affected by this part.

1008 Section 32. Subsection (5) of section 736.0602, Florida
1009 Statutes, is amended to read:

1010 736.0602 Revocation or amendment of revocable trust.—

1011 (5) A settlor's powers with respect to revocation,
1012 amendment, or distribution of trust property may be exercised by
1013 an agent under a power of attorney only as authorized by s.
1014 709.2206 ~~709.08~~.

1015 Section 33. Sections 709.01, 709.015, 709.08, and 709.11

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1016 Florida Statutes, are repealed.

1017 Section 34. This act shall take effect October 1, 2011.