

By the Committee on Judiciary; and 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. 709.2105.

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 or osteopathic medicine pursuant to chapter 458 or chapter 459
266 as of the date of the affidavit. The affidavit executed by the
267 physician must state that the physician is licensed to practice
268 medicine or osteopathic medicine pursuant to chapter 458 or
269 chapter 459, that the physician is the primary physician who has
270 responsibility for the treatment and care of the principal, and
271 that the physician believes that the principal lacks the
272 capacity to manage property.

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

277 Section 11. Section 709.2109, Florida Statutes, is created
278 to read:

279 709.2109 Termination or suspension of power of attorney or
280 agent's authority.-

281 (1) A power of attorney terminates when:

282 (a) The principal dies;

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

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

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

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

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291 (f) The purpose of the power of attorney is accomplished;
292 or

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

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

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

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

303 (c) The power of attorney terminates.

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

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

317 (b) Notwithstanding the provisions of this section, unless
318 otherwise ordered by the court, a proceeding to determine
319 incapacity does not affect the authority of the agent to make

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320 health care decisions for the principal, including, but not
321 limited to, those provided in chapter 765. If the principal has
322 executed a health care advance directive designating a health
323 care surrogate, the terms of the directive control if the
324 directive and the power of attorney are in conflict unless the
325 power of attorney is later executed and expressly states
326 otherwise.

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

333 Section 12. Section 709.2110, Florida Statutes, is created
334 to read:

335 709.2110 Revocation of power of attorney.-

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

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

344 Section 13. Section 709.2111, Florida Statutes, is created
345 to read:

346 709.2111 Co-agents and successor agents.-

347 (1) A principal may designate two or more persons to act as
348 co-agents. Unless the power of attorney otherwise provides, each

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349 co-agent may exercise its authority independently.

350 (2) A principal may designate one or more successor agents
351 to act if an agent resigns, dies, becomes incapacitated, is not
352 qualified to serve, or declines to serve. Unless the power of
353 attorney otherwise provides, a successor agent:

354 (a) Has the same authority as that granted to the original
355 agent; and

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

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

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

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

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378 any claim against a predecessor agent's estate, for any of the
379 predecessor agent's actions or omissions as agent.

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

388 Section 14. Section 709.2112, Florida Statutes, is created
389 to read:

390 709.2112 Reimbursement and compensation of agent.—

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

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

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

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

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407 for more than three principals at the same time.

408 Section 15. Section 709.2113, Florida Statutes, is created
409 to read:

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

417 Section 16. Section 709.2114, Florida Statutes, is created
418 to read:

419 709.2114 Agent's duties.—

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

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

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

426 2. Must act in good faith;

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

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

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

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

435 b. The principal's foreseeable obligations and need for

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436 maintenance;

437 c. Minimization of taxes, including income, estate,
438 inheritance, generation-skipping transfer, and gift taxes;

439 d. Eligibility for a benefit, a program, or assistance
440 under a statute or rule; and

441 e. The principal's personal history of making or joining in
442 making gifts;

443 (b) May not delegate authority to a third person except as
444 provided in s. 518.112;

445 (c) Must keep a record of all receipts, disbursements, and
446 transactions made on behalf of the principal; and

447 (d) Must create and maintain an accurate inventory each
448 time the agent accesses the principal's safe-deposit box, if the
449 power of attorney authorizes the agent to access the box.

450 (2) Except as otherwise provided in the power of attorney,
451 an agent who has accepted appointment shall:

452 (a) Act loyally for the sole benefit of the principal;

453 (b) Act so as not to create a conflict of interest that
454 impairs the agent's ability to act impartially in the
455 principal's best interest;

456 (c) Act with the care, competence, and diligence ordinarily
457 exercised by agents in similar circumstances; and

458 (d) Cooperate with a person who has authority to make
459 health care decisions for the principal in order to carry out
460 the principal's reasonable expectations to the extent actually
461 known by the agent and, otherwise, act in the principal's best
462 interest.

463 (3) An agent who acts in good faith is not liable to any
464 beneficiary of the principal's estate plan for failure to

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465 preserve the plan.

466 (4) If an agent is selected by the principal because of
467 special skills or expertise possessed by the agent or in
468 reliance on the agent's representation that the agent has
469 special skills or expertise, the special skills or expertise
470 must be considered in determining whether the agent has acted
471 with care, competence, and diligence under the circumstances.

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

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

486 Section 17. Section 709.2115, Florida Statutes, is created
487 to read:

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

492 (1) Relieves the agent of liability for breach of a duty
493 committed dishonestly, with improper motive, or with reckless

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494 indifference to the purposes of the power of attorney or the
495 best interest of the principal; or

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

498 Section 18. Section 709.2116, Florida Statutes, is created
499 to read:

500 709.2116 Judicial relief; conflicts of interests.—

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

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

505 (a) The principal or the agent, including any nominated
506 successor agent.

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

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

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

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

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

519 (3) In any proceeding commenced by filing a petition under
520 this section, including, but not limited to, the unreasonable
521 refusal of a third person to allow an agent to act pursuant to
522 the power of attorney, and in challenges to the proper exercise

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523 of authority by the agent, the court shall award reasonable
524 attorney's fees and costs.

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

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

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

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

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

542 (b) Affiliates of an agent include:

543 1. The agent's spouse;

544 2. The agent's descendants, siblings, parents, or their
545 spouses;

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

549 4. A person or entity that owns a significant interest in
550 the agent; or

551 5. The agent acting in a fiduciary capacity for someone

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552 other than the principal.

553 Section 19. Section 709.2117, Florida Statutes, is created
554 to read:

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

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

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

564 Section 20. Section 709.2118, Florida Statutes, is created
565 to read:

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

572 Section 21. Section 709.2119, Florida Statutes, is created
573 to read:

574 709.2119 Acceptance of and reliance upon power of
575 attorney.—

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

580 1. The power of attorney were genuine, valid, and still in

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581 effect;

582 2. The agent's authority were genuine, valid, and still in
583 effect; and

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

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

591 1. The power of attorney is void, invalid, or terminated;
592 or

593 2. The purported agent's authority is void, invalid,
594 suspended, or terminated.

595 (2) A third person may require:

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

606 (b) An officer of a financial institution acting as agent
607 to execute a separate affidavit, or include in the form of the
608 affidavit, the officer's title and a statement that the officer
609 has full authority to perform all acts and enter into all

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610 transactions authorized by the power of attorney for and on
611 behalf of the financial institution in its capacity as agent. A
612 written affidavit executed by the agent under this subsection
613 may, but need not, be in the following form:

614
615 STATE OF.....

616 COUNTY OF.....
617

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

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

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

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

629 a. The Principal is not deceased;

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

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

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

637 5. Affiant is the successor to ...(insert name of
638 predecessor agent)...., who has resigned, died, become

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639 incapacitated, is no longer qualified to serve, has declined to
640 serve as agent, or is otherwise unable to act, if applicable.

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

646
647
648
...(Affiant)...

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

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

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

657
658 Personally Known OR Produced Identification

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

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

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

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668 (b) An opinion of counsel as to any matter of law
669 concerning the power of attorney if the third person making the
670 request provides in a writing or other record the reason for the
671 request; or

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

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

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

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

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697 under this provision until 1 year after the first official
698 report or listing of the principal as missing or missing in
699 action. An affidavit of an officer of the Armed Forces having
700 maintenance and control of the records pertaining to those
701 missing or missing in action that the principal has been in that
702 status for a given period is conclusive presumption of the fact.

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

705 709.2120 Refusal to accept power of attorney.—

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

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

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

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

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

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

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

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726 (a) The third person is not otherwise required to engage in
727 a transaction with the principal in the same circumstances;

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

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

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

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

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

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

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

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

753 709.2121 Notice.—

754 (1) A notice, including a notice of revocation, notice of

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

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

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

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

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

779 709.2201 Authority of agent.—

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

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

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

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

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

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

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

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

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813 (b) Make any affidavit as to the personal knowledge of the
814 principal;

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

816 (d) Execute or revoke any will or codicil for the
817 principal; or

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

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

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

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

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

835 709.2202 Authority that requires separate signed
836 enumeration.-

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

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842 another agreement or instrument:

843 (a) Create an inter vivos trust;

844 (b) With respect to a trust created by or on behalf of the

845 principal, amend, modify, revoke, or terminate the trust, but

846 only if the trust instrument explicitly provides for amendment,

847 modification, revocation, or termination by the settlor's agent;

848 (c) Make a gift, subject to subsection (3);

849 (d) Create or change rights of survivorship;

850 (e) Create or change a beneficiary designation;

851 (f) Waive the principal's right to be a beneficiary of a

852 joint and survivor annuity, including a survivor benefit under a

853 retirement plan; or

854 (g) Disclaim property and powers of appointment.

855 (2) Notwithstanding a grant of authority to do an act

856 described in subsection (1), unless the power of attorney

857 otherwise provides, an agent who is not an ancestor, spouse, or

858 descendant of the principal may not exercise authority to create

859 in the agent, or in an individual to whom the agent owes a legal

860 obligation of support, an interest in the principal's property,

861 whether by gift, right of survivorship, beneficiary designation,

862 disclaimer, or otherwise.

863 (3) Unless the power of attorney otherwise provides, a

864 provision in a power of attorney granting general authority with

865 respect to gifts authorizes the agent to only:

866 (a) Make outright to, or for the benefit of, a person a

867 gift of any of the principal's property, including by the

868 exercise of a presently exercisable general power of appointment

869 held by the principal, in an amount per donee not to exceed the

870 annual dollar limits of the federal gift tax exclusion under 26

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871 U.S.C. s. 2503(b), as amended, without regard to whether the
872 federal gift tax exclusion applies to the gift, or if the
873 principal's spouse agrees to consent to a split gift pursuant to
874 26 U.S.C. s. 2513, as amended, in an amount per donee not to
875 exceed twice the annual federal gift tax exclusion limit; and
876 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to
877 the splitting of a gift made by the principal's spouse in an
878 amount per donee not to exceed the aggregate annual gift tax
879 exclusions for both spouses.

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

899 (5) This section does not apply to a power of attorney

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900 executed before October 1, 2011.

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

903 709.2208 Banks and other financial institutions.—

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

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

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

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

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

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

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

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929 (g) Apply for, receive, and use debit cards, electronic
930 transaction authorizations, and traveler's checks from a
931 financial institution.

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

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

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

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

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

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

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

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

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

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958

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

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

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

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

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

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987 Section 29. Section 709.2303, Florida Statutes, is created
988 to read:

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

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

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

1000 Section 31. Section 709.2402, Florida Statutes, is created
1001 to read:

1002 709.2402 Effect on existing powers of attorney.—Except as
1003 otherwise provided in this part:

1004 (1) This part applies to a power of attorney created
1005 before, on, or after October 1, 2011, and to acts of the agent
1006 occurring on or after that date.

1007 (2) An act of the agent occurring before October 1, 2011,
1008 is not affected by this part.

1009 Section 32. Subsection (5) of section 736.0602, Florida
1010 Statutes, is amended to read:

1011 736.0602 Revocation or amendment of revocable trust.—

1012 (5) A settlor's powers with respect to revocation,
1013 amendment, or distribution of trust property may be exercised by
1014 an agent under a power of attorney only as authorized by s.
1015 709.2202 ~~709.08~~.

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1016 Section 33. Sections 709.01, 709.015, 709.08, and 709.11
1017 Florida Statutes, are repealed.
1018 Section 34. This act shall take effect October 1, 2011.