

FINAL BILL ANALYSIS

BILL #: CS/SB 670

FINAL HOUSE FLOOR ACTION:

115 Y's 0 N's

SPONSOR: Sen. Joyner (Rep. Harrison)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/HB 815

SUMMARY ANALYSIS

CS/SB 670 passed the House on May 4, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-210, Laws of Florida, and becomes effective October 1, 2011.

A power of attorney is a legal document in which a principal authorizes a person or entity (the agent or attorney-in-fact) to act on his or her behalf. There are three basic types of power of attorney: general power of attorney, which ceases when the principal becomes incapacitated; durable power of attorney, which continues once the person becomes incapacitated; and springing or contingent power of attorney, which power of attorney becomes effective upon the occurrence of a specified event.

The bill is a comprehensive re-write of the statutes that regulate powers of attorney in the state of Florida based in large part on the Uniform Power of Attorney Act. The bill provides:

- All powers of attorney become effective upon execution, with the exception of powers of attorney based on military deployment.
- All powers of attorney must be signed by the principal and witnessed and signed by two people and also notarized.
- A power of attorney executed in another state is valid in Florida if the power of attorney complied with the laws of the state of execution.
- That it applies to all powers of attorney on or after the effective date of October 1, 2011.
- When a power of attorney and the authority of an agent terminate.
- That only a qualified agent may receive compensation.
- When a third party may rely on power of attorney and the notice requirement for termination or suspension of power of attorney.
- What a third party may request from an agent in order to verify power of attorney.
- That a third person must accept or reject a power of attorney within a reasonable time.
- How a notice may be delivered to a third person regarding termination or suspension of the power of attorney.
- That a power of attorney must expressly provide what an agent can and cannot do and may not include a general provision granting the agent broad authority.
- That additional signatures or initials of the principal are required to exercise authority in certain areas.
- The duties and liabilities of an agent.
- That a principal may appoint two or more agents and that they may act independently and exercise full authority.
- That the principal may designate successor agents.
- Who may file a petition for judicial relief regarding a power of attorney.

This bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Power of Attorney

A power of attorney is a legal document in which the client (the principal) authorizes a person or entity (the agent or attorney-in-fact)¹ to act on his or her behalf. What authority is granted depends on the specific language of the power of attorney. A person giving a power of attorney may provide very broad authority or may limit the authority to certain specific acts.

A power of attorney may be limited or general. A limited power of attorney may give the person acting on the power of attorney the ability to do only one function. An example would be a person giving power of attorney to another to sell a house or a car. The power of attorney would then terminate after the function was complete.

There are typically three general types of power of attorney:

- General power of attorney delegates to the agent the authority to act on behalf of the principal regarding specific acts on behalf of the principal. This power of attorney expires automatically upon the principal becoming mentally ill or otherwise incapacitated.²
- Durable power of attorney delegates specific types of powers, and is immediately effective and exercisable upon the date of execution. Durable power of attorney remains in effect if the principal subsequently becomes incapacitated, but expires immediately once the principal dies, is adjudicated legally incapacitated, or revokes the power of attorney.
- Contingent or springing power of attorney delegates specific types of powers but is not exercisable until the occurrence of a specified time or specified event. Until the specified time or event occurs, the contingent power of attorney is dormant and ineffective, and the principal retains sole control over his or her property and is able to exercise other rights.³

Uniform Power of Attorney Act

In 2006, the Uniform Law Commission of the National Conference of Commissioners on Uniform Laws completed a Uniform Power of Attorney Act (UPOAA). The catalyst for UPOAA was a national study which revealed a growing divergence in state power of attorney legislation. Since its completion, nine states and one territory have adopted the UPOAA.⁴ The goal of the UPOAA is to promote uniformity and portability of power of attorney across state lines.

Durable Power of Attorney in Florida

Durable power of attorney is recognized and regulated in Florida pursuant to s. 709.08, F.S. The statutory requirements include that the durable of attorney must:

¹ Chapter 709, F.S., uses the term "attorney-in-fact" to describe a person granted authority pursuant to a power of attorney. This bill uses the term "agent" to describe a person granted authority pursuant to a power of attorney.

² General power of attorney is the default power of attorney in the state.

³ Section 709.08(1), F.S., provides that a durable power of attorney may be effective upon a principal's incapacity.

⁴ See <http://www.nccusl.org/Act.aspx?title=Power%20of%20Attorney> for information regarding the UPOAA. Nine states have adopted the act and four states have proposed legislation to adopt the act this year. (Last visited March 11, 2011).

- Be in writing;
- Be executed with the same formalities required by Florida law;⁵
- Contain the words, 'This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in 709.08, Florida Statutes,' or similar words.⁶

The durable power of attorney is exercisable at the date of execution unless the power of attorney is conditioned on the principal's lack of capacity to manage property.⁷

Pursuant to s. 709.08(2), F.S., a natural person, 18 years of age or older and of sound mind may serve as an agent. A financial institution with trust powers, having a place of business in this state and authorized to conduct trust business in the state may also serve as an agent.⁸ A not-for profit corporation may also serve as an agent.⁹

The agent may exercise the authority granted pursuant to the power of attorney until:

- The principal dies;
- The principal revokes the power of attorney; or
- A court determines that the principal is totally or partially incapacitated, unless the court determines that certain authority granted by the power of attorney is to remain exercisable by the agent.¹⁰

If a person or entity initiates proceedings in any court to determine the principal's capacity, the power of attorney is suspended pending the outcome of the proceedings.¹¹

Effect of the Bill: Scope

The bill repeals ss. 709.01, 709.015, 709.08, and 709.11, F.S., and divides ch. 709, F.S., into two parts; part I entitled "Powers of Appointment," consisting of current ss. 709.02-709.07, F.S., and part II entitled "Powers of Attorney," consisting of newly created ss. 709.2101-709.2402, F.S.

The bill is substantially based on the UPOAA with some modifications.

The bill creates s. 709.2102, F.S., which provides definitions for the act.

⁵ Section 689.01, F.S., requires the document to be signed by the person conveying, two subscribing witnesses and signed by the person receiving.

⁶ See s. 709.08(1), F.S.

⁷ As defined in s. 744.102(12)(a), F.S., "To 'manage property' means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income." The durable power of attorney becomes exercisable upon the delivery of affidavits provided in s. 709.08(4)(c) and (d), F.S. This is referred to as a springing power of attorney.

⁸ As defined in ch. 655, F.S., and s. 655.005(1)(h), F.S., "financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

⁹ Provided that the charity has been organized for charitable or religious purposes and has been appointed as court guardian prior to January 1, 1996 and is tax exempt under 26 U.S.C. s. 501(c)(3).

¹⁰ Section 709.08(3)(b), F.S.

¹¹ Section 709.08(3)(c)1., F.S.

The bill creates s. 709.2103, F.S., which provides that "this part applies to all powers of attorney" created by an individual unless the power is:

- A proxy or other delegation to exercise voting rights or management rights with respect to an entity;
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a government purpose; or
- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.

The bill creates s. 709.2104, F.S., which provides that a power of attorney is durable only if the instrument contains the words "This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in Chapter 709, Florida Statutes," or similar words. If the power of attorney does not contain this phrase or similar language the power of attorney will be presumed to be general. This section maintains that general power of attorney is the default power of attorney in the state of Florida.

The bill creates s. 709.2105, F.S., which provides the qualifications for an agent to be a natural person 18 years of age or older or a financial institution that has trust powers. The section also requires a power of attorney to be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public.

The bill creates s. 709.2106, F.S., which provides that a power of attorney executed on or after October 1, 2011, is valid if its execution complies with the requirements of s. 709.2105, F.S. The bill also provides that a power of attorney executed prior to October 1, 2011 is valid if the execution complied with the laws of this state at the time of execution. The bill provides that a power of attorney executed in another state is valid even if it does not comply with the execution requirements of Florida so long as the power of attorney complied with the laws of the state of execution.

The bill creates s. 709.2107, F.S., which provides that the meaning and effectiveness of the power of attorney is governed by this part if it is used in Florida or provides that is to be governed by the laws of Florida.

The bill creates s. 709.2108, F.S., which provides that a power of attorney, with the exception of a springing power of attorney created prior to October 1, 2011, is exercisable when executed. The bill also provides that a power of attorney is not effective if it is conditioned on a future date or upon the occurrence of a future event or contingency. This section would not allow any springing or contingent powers of attorney after the effective date of the bill. The bill retains the exception for military deployment.

The bill creates s. 709.2402, F.S., which provides that this act applies to powers of attorney created on or after October 1, 2011, and to the acts of an agent occurring on or after that date, but that this act does not apply to the acts of an agent that occurred prior to October 1, 2011.

The bill creates s. 709.2301, F.S., which provides that the common law of agency and principles of equity supplement these new provisions except as modified by the bill and other state law.

Effect of the Bill: Acceptance of Appointment

The bill creates 709.2114, F.S., which provides the methods by which an agent may accept appointment. An agent may accept appointment by exercising authority as an agent or by any other assertion or conduct. The section provides that an agent's acceptance is limited to those aspects of the power of attorney for which the agent's assertions or conduct reasonably manifest acceptance.

Effect of the Bill: Termination of Power of Attorney/Authority of Agent

The bill creates s. 709.2109, F.S., which provides when a power of attorney or agent's authority is suspended or terminated. The bill provides that the power of attorney is suspended or terminated when:

- The principal dies;
- The principal becomes incapacitated, if the power of attorney is not durable;
- The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;
- The principal revokes the power of attorney;
- The power of attorney provides that it terminates;
- The purpose of the power of the attorney is accomplished; or
- An agent's authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.

An agent's authority terminates when:

- The agent dies, becomes incapacitated, resigns, or is removed by a court;
- An action is filed for a dissolution or annulment of the agent's marriage to the principal for their legal separation, unless the power of attorney otherwise provides; or
- The power of attorney terminates.

The section also provides, consistent with current law, that if any person initiates judicial proceedings to determine the principal's incapacity or for the appointment of a guardian, then the authority granted pursuant to the power of attorney is suspended. The section also provides that the termination or suspension of an agent's authority or of power of attorney is not effective as to an agent who without knowledge acts in good faith under the power of attorney.

The bill creates s. 709.2110, F.S., which provides that a revocation of attorney must be done by expressing the revocation in a subsequently executed power of attorney or other writing signed by the principal.

Effect of the Bill: Qualified Agent

The bill creates s. 709.2112, F.S., which provides that a qualified agent is entitled to reimbursement of expenses unless the power of attorney provides otherwise. The section defines a qualified agent as:

An agent who is the spouse of the principal, an heir of the principal within the meaning of s. 732.103, a financial institution that has trust powers and a place of business in this

state, an attorney or certified public accountant who is licensed in this state, or a natural person who has never been an agent for more than three principals at the same time.

The section provides that only a qualified agent may receive compensation.

Third Party-Liability and Notice

Pursuant to current Florida law, a third party may rely upon a durable power of attorney until the third party has received notice.¹² A third party may also require the agent to execute the affidavit that is provided in s. 709.08(4)(c), F.S.,¹³ prior to accepting the agent's power of attorney.

Section 709.08(4)(g), F.S., provides that a third party who acts pursuant to the directions of the agent and relies on the authority granted in the power of attorney is to be held harmless by the principal, the principal's estate, beneficiaries or joint owners. This only applies if the acts happened prior to the third party receiving notice of the termination.

Section 709.08(5)(a), F.S., provides that notice is not effective until served upon the agent or any third persons relying upon a durable power of attorney. The notice must be in writing and served upon the person bound by the notice either through personal delivery or through a mail service that requires a signed receipt. In the case of a financial institution, a third party must be given 14 calendar days after service to act upon the notice.¹⁴

Effect of the Bill: Third Party Acceptance and Reliance

The bill creates s. 709.2119, F.S., which outlines third party acceptance and reliance on an agent's power of attorney. The section provides that:

A third person who in good faith accepts a power of attorney executed in the manner required by existing law at the time of its execution may rely upon the power of attorney and the actions of the agent that are reasonably within the scope of the agent's authority and may enforce any obligation created by the actions of the agent as if:

- The power of attorney were genuine, valid, and still in effect; and
- The agent's authority were genuine, valid, and still in effect; and
- The authority of the officer executing for or on behalf of a financial institution that has trust powers and acting as agent is genuine, valid, and still in effect.

The section also provides that a third person does not accept a power of attorney in good faith if the third person has notice that:

- The power of attorney is void, invalid, or terminated; or
- The purported agent's authority is void, invalid, suspended or terminated.

¹² Section 709.08(4)(a), F.S.

¹³ Id.

¹⁴ Section 709.08(5)(b), F.S.

The section also provides that a third person may require an agent to execute an affidavit. The section provides a statutory form that may be used as the affidavit. The section provides that a third person may request and without further investigation rely on:

- A verified English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;
- An opinion of counsel as to any matter of law concerning the power of attorney if the third party making the request provides in a writing or other record the reason for the request; or
- The form affidavit.

The section also provides that any third person is held harmless from any loss suffered before the receipt of written notice as provided in s. 709.2121, F.S.

The section also provides that a third person must accept or reject the power of attorney within a reasonable time and if they choose to reject the power of attorney they must state in writing the reason for the rejection. The section provides that a third person is not required to accept a power of attorney if:

- The third person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- The third person has knowledge of the termination or suspension of the agent's authority or of the power of attorney before exercising the power;
- A timely request by the third person for an affidavit, English translation, or opinion of counsel is refused by the agent;
- The third person believes in good faith that the power is not valid or that the agent does not have the authority to perform the act requested; or
- The third person makes, or has knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person for or with the agent.

The section provides that a third person who violates this section is subject to a court order mandating that the power of attorney be honored and is liable for damages including attorneys fees and costs.

Effect of the Bill: Notice

The bill creates s. 709.2121, F.S., regarding notice to the agent and to third parties. The section provides that a notice including:

- Notice of revocation;
- Notice of partial or complete termination by adjudication of incapacity;
- The occurrence of an event referenced in the power of attorney;
- Notice of death of the principal; or
- Notice of suspension by initiation of proceedings to determine incapacity or to appoint a guardian;

is not effective until written notice is provided to the agent or any third party persons relying upon a power of attorney. Permissible ways in which to deliver the notice include first-class mail, personal delivery, delivery to the person's last known address, or a properly delivered fax or other electronic message. The section also requires that a notice to a financial institution must contain the name, address, and the last four digits of the principal's tax ID and be directed to a bank officer. The notice is effective when given, except the notice upon a financial institution, brokerage company, or title company is not effective until five days after it is received.

Powers and Limitations of the Agent

Section 709.08(7)(a), F.S., provides that an agent, except as limited by the power of attorney or by statute, has the authority to perform every act authorized and specifically enumerated in the durable power of attorney. These acts include, executing stock powers including delegating to a stock broker or a transfer agent the ability to register any stocks or bonds, and conveying and mortgaging homestead property.¹⁵ An agent may not perform the following duties:

- Perform duties under a contract that requires the exercise of personal services of the principal;
- Make any affidavit as to the personal knowledge of the principal;
- Vote in any public election on behalf of the principal;
- Execute or revoke any will or codicil for the principal;
- Create, amend, modify, or revoke any document or other disposition effective at the principal's death or transfer assets to an existing trust created by the principal unless expressly authorized by the principal; or
- Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.¹⁶

If specifically granted in the power of attorney, the agent may make all health care decisions for the principal.¹⁷

Effect of the Bill: Authority of Agent

The bill creates s. 709.2201, F.S., which outlines the authority of an agent. The section provides that an agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that grant of specific authority. The section provides that:

General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, is not an express grant of specific authority and does not grant authority to the agent.

Pursuant to the bill, a power of attorney must specifically provide what the agent can and cannot do under the instrument. The requirement also prohibits incorporation by reference in the power of

¹⁵ Section 709.08(7)(a)2., F.S., requires the joinder of a spouse in order to convey or mortgage homestead property.

¹⁶ Section 709.08(7)(b), F.S.

¹⁷ Section 709.08(7)(c), F.S.

attorney.¹⁸ The section also provides that an agent may convey or mortgage homestead property, but if the principal is married the agent would need the joinder of the spouse.

The bill also provides that an agent may not:

- Perform duties under a contract that requires the exercise of personal services of the principal;
- Make any affidavit as to the personal knowledge of the principal;
- Vote in any public election on behalf of the principal;
- Execute or revoke any will or codicil for the principal; or
- Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.

The bill provides that the authority granted to the agent by the principal is exercisable with respect to property that the principal owned when the instrument was executed and property acquired afterward, whether or not the property is located in the state. The bill also provides that the actions performed by the agent, pursuant to the power of attorney, have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal had performed the act.

The bill creates s. 709.2202, F.S, which outlines agent authority that requires an additional signature from the principal in order for the agent to act unless the exercise is prohibited by another agreement or instrument. These include:

- Creation of an inter vivos trust;
- With respect to a trust created by or on behalf of the principal, amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent;
- Make a gift (subject to further restrictions involving gifts to the agent's or agent's relatives, gifts over the IRS tax level);
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- Disclaim property and powers of appointment.

The bill provides that this section does not apply to a power of attorney executed prior to October 1, 2011.

Effect of the Bill: Banking and Investment Activities

The bill creates s. 709.2208, F.S., which provides that a power of attorney that includes the statement that the agent has "authority to conduct banking transactions as provided in section 709.2208(1), Florida Statutes," or "authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes" grants general authority to the agent with respect to banking transactions and investment transactions as enumerated in the section without specific enumeration in the power of the attorney. The section also defines investment instruments for the purposes of this section.

¹⁸ There are two exceptions to this in the bill involving banking and investment transactions which refer to specific authority located in statute.

The bill creates s. 709.2301, F.S., which provides that this part does not supersede any other law applicable to financial institutions or other entities, and that law controls if inconsistent with this part.

Standard of Care of the Agent

Section 709.08(8), F.S., provides that an agent is a fiduciary who must observe the standards of care applicable to trustees.¹⁹

The agent is also not liable to third parties for any act pursuant to the durable power of attorney if the act was authorized at the time. If the exercise of the power is improper, the agent is liable to the interested person.

Effect of the Bill: Duties and Liabilities of an Agent

The bill creates s. 709.2114, F.S., which provides an agent's duties, including that the agent:

- May not act contrary to the principal's reasonable expectations actually known to the agent;
- Must act in good faith;
- May not act in a manner that is contrary to the principal's best interest, except as provided in paragraph (2)(d)²⁰ and s. 709.2202;²¹
- To the extent actually known by the agent, must attempt to preserve the principal's estate plan if preserving the plan is consistent with the principal's best interest based on all relevant factors;²²
- May not delegate authority to a third person except as provided in s. 518.112, F.S.;²³
- Must keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and
- Must create and maintain an accurate inventory each time the agent accesses the principal's safe-deposit box, if the power of attorney authorizes the agent to access the box.

The section also provides that unless otherwise provided in the power of attorney the agent must:

- Act loyally for the sole benefit of the principal;
- Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
- Act with care, competence, and diligence ordinarily exercised by agents in similar circumstances; and
- Cooperate with a person who has authority to make health care decisions for the principal in order to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.

¹⁹ Section 709.08(8), F.S., refers to the duties of a trustee as described in s. 736.0901, F.S.

²⁰ This paragraph relates to cooperating with the person who has authority to make health care decisions for the principal.

²¹ This section refers to power of attorney that require separate signed enumeration including amending trusts, creating interests in the principal's property, and giving of gifts of the principal's property.

²² Factors include the value and nature of the principal's property, the principal's foreseeable obligations and need for maintenance, minimization of taxes, eligibility of statutory or regulatory benefit, and the principal's personal history of making or the joining of making of gifts.

²³ This refers to the prudent investor rule.

The section also provides that an agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

The bill creates s. 709.2115, F.S., which provides that a power of attorney may provide that the agent is not liable for any acts or decisions made by the agent in good faith and under the power of attorney except to the extent the provision:

- Relieves the agent of liability for breach of a duty committed dishonestly, with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or
- Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Multiple Agents: Joint Action Required

If a principal authorizes more than one agent, unless the durable power of attorney provides otherwise, concurrence of both is required on all acts in the exercise of power.²⁴ If three or more agents are designated than a majority agreement is needed.²⁵ An agent is also not liable for the acts of the other agents if that agent does not concur with the actions or did join in the action but expressed dissent in writing.²⁶ An agent who accepts appointment is liable for failure to participate in the administration of assets or for the failure to attempt to prevent a breach of fiduciary duty.²⁷

If one or more of the named agents dies, unless expressly provided otherwise in the durable power of attorney, the other agents may continue to exercise the authority.²⁸

Effect of the Bill: Designation of Two or more Agents

The bill creates s. 709.2111, F.S., which provides that a principal may designate two or more persons to act as co-agents or designate successor agents. The section provides that:

Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

The section also provides that an agent is not liable for a co-agent who breaches his or her fiduciary duty if he or she did not participate or conceal the breach. The section also provides that if the agent has actual knowledge of the fiduciary breach he or she must act reasonably to safeguard the principal's best interest. Notice to the principal satisfies the reasonable requirement.

Effect of the Bill: Judicial Relief

The bill creates s. 709.2116, F.S., which provides judicial relief and conflict of interest relief. Pursuant to this section, a court may construe or enforce a power of attorney, review the agent's conduct, terminate the agent's authority, remove the agent, and grant appropriate relief. A petition for judicial relief may be made by:

²⁴ Section 709.08(9)(a), F.S.

²⁵ Section 709.08(9)(b), F.S.

²⁶ Section 709.08(9)(c), F.S.

²⁷ Section 709.08(9)(d), F.S.

²⁸ Section 709.08(10), F.S.

- A principal;
- An agent;
- A guardian, conservator, trustee or other fiduciary acting for the principal or the principal's estate;
- A health care decision maker;
- A governmental agency having regulatory authority to protect the principal's welfare;
- A person who is asked to honor the power of attorney; or
- Any other interested person who demonstrates that they are interested in the principal's welfare and have a good faith belief that intervention by the court is necessary.

The bill provides that the court may award taxable costs and attorneys fees as in chancery actions.

Effect of the Bill: Application of the Bill

The bill creates s. 709.2402, F.S., which provides that:

- With respect to formalities of execution, this act applies to a power of attorney created on or after October 1, 2011.
- With respect to all matters other than formalities of execution, this act applies to a power of attorney regardless of the date of creation.
- With respect to a power of attorney existing on October 1, 2011, this act does not invalidate such power of attorney and it shall remain in effect. If a right was acquired under any other law before October 1, 2011, that law continues to apply to the right even if it has been repealed or superseded.
- An act of an agent occurring before October 1, 2011, is not affected by this part.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.