

1                   A bill to be entitled  
2           An act relating to powers of attorney; providing  
3           directives to the Division of Statutory Revision; creating  
4           s. 709.2101, F.S.; providing a short title; creating s.  
5           709.2102, F.S.; providing definitions; creating s.  
6           709.2103, F.S.; providing applicability; providing  
7           exceptions; creating s. 709.2104, F.S.; providing for a  
8           durable power of attorney; creating s. 709.2105, F.S.;  
9           specifying the qualifications for an agent; providing  
10          requirements for the execution of a power of attorney;  
11          creating s. 709.2106, F.S.; providing for the validity of  
12          powers of attorney created by a certain date or in another  
13          jurisdiction; providing for the validity of a military  
14          power of attorney; providing for the validity of a  
15          photocopy or electronic copy of a power of attorney;  
16          creating s. 709.2107, F.S.; providing for the meaning and  
17          effectiveness of a power of attorney; creating s.  
18          709.2108, F.S.; specifying when a power of attorney is  
19          effective; providing limitations with respect to a future  
20          power of attorney; creating s. 709.2109, F.S.; providing  
21          for the termination or suspension of a power of attorney  
22          or an agent's authority; creating s. 709.2110, F.S.;  
23          providing for the revocation of a power of attorney;  
24          creating s. 709.2111, F.S.; providing for the designation  
25          of co-agents and successor agents; specifying the  
26          responsibility of a successor agent for a predecessor  
27          agent; authorizing a co-agent to delegate certain banking  
28          transaction to a co-agent; creating s. 709.2112, F.S.;

29 providing for the reimbursement and compensation of  
30 agents; creating s. 709.2113, F.S.; providing for the  
31 agent's acceptance of appointment; creating s. 709.2114,  
32 F.S.; providing for an agent's duties; limiting an agent's  
33 liability, absent a breach of duty; requiring that an  
34 agent make certain disclosures upon order of a court, upon  
35 the death of the principal, or under certain other  
36 circumstances; creating s. 709.2115, F.S.; providing for  
37 the exoneration of an agent; providing exceptions;  
38 creating s. 709.2116, F.S.; providing for judicial relief;  
39 authorizing the award of attorney's fees and costs;  
40 providing for a judicial challenge to an agent's exercise  
41 of power based on a conflict of interest; specifying the  
42 burden of proof required to overcome that challenge;  
43 creating s. 709.2117, F.S.; providing for an agent's  
44 liability; creating s. 709.2118, F.S.; providing for an  
45 agent's resignation; creating s. 709.2119, F.S.; providing  
46 for the acceptance of and reliance upon a power of  
47 attorney; authorizing a third party to require an  
48 affidavit; providing for the validity of acts taken on  
49 behalf of a principal who is reported as missing by a  
50 branch of the United States Armed Forces; providing a  
51 restriction on the conveyance of homestead property held  
52 by such a principal; creating s. 709.2120, F.S.; providing  
53 for liability if a third person refuses to accept a power  
54 of attorney under certain circumstances; providing for an  
55 award of damages and attorney's fees and costs; creating  
56 s. 709.2121, F.S.; requiring that notice of certain events

57 | be provided to an agent or other third person; specifying  
58 | the form of the notice and when it is effective; creating  
59 | s. 709.2201, F.S.; providing for the authority of an  
60 | agent; providing limitations; providing that an agent's  
61 | authority extends to property later acquired by the  
62 | principal; creating s. 709.2202, F.S.; specifying that  
63 | certain authority requires separate signed enumeration;  
64 | restricting the amount of certain gifts made by an agent;  
65 | specifying certain acts that do not require specific  
66 | authority if the agent is authorized to conduct banking  
67 | transactions; limiting the application of such provision;  
68 | creating s. 709.2208, F.S.; providing for authority to  
69 | conduct banking and security transactions; creating s.  
70 | 709.2301, F.S.; specifying the role of common law;  
71 | creating s. 709.2302, F.S.; providing for the preemption  
72 | of laws relating to financial institutions; creating s.  
73 | 709.2303, F.S.; providing for the recognition of other  
74 | remedies; creating s. 709.2401, F.S.; specifying the  
75 | relationship of the act to federal law regulating  
76 | electronic signatures; creating s. 709.2402, F.S.;  
77 | providing for powers of attorney executed on or after the  
78 | effective date of the act; amending s. 736.0602, F.S.;  
79 | conforming a cross-reference; repealing s. 709.01, F.S.,  
80 | relating to the authority of an agent when the principal  
81 | is dead; repealing s. 709.015, F.S., relating to the  
82 | authority of an agent when the principal is missing;  
83 | repealing s. 709.08, F.S., relating to durable powers of  
84 | attorney; repealing s. 709.11, F.S., relating to a

85 deployment-contingent power of attorney; providing an  
 86 effective date.

87

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

89

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

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

96 Section 3. Section 709.2101, Florida Statutes, is created  
 97 to read:

98 709.2101 Short title.—This part may be cited as the  
 99 "Florida Power of Attorney Act."

100 Section 4. Section 709.2102, Florida Statutes, is created  
 101 to read:

102 709.2102 Definitions.—As used in this part, the term:

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

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

109 (3) "Electronic" means technology having electrical,  
 110 digital, magnetic, wireless, optical, electromagnetic, or  
 111 similar capabilities.

112 (4) "Financial institution" has the same meaning as in s.

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113 655.005.

114 (5) "Incapacity" means the inability of an individual to  
115 take those actions necessary to obtain, administer, and dispose  
116 of real and personal property, intangible property, business  
117 property, benefits, and income.

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

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

140 (8) "Presently exercisable general power of appointment"

141 means, with respect to property or a property interest subject  
 142 to a power of appointment, power exercisable at the time in  
 143 question to vest absolute ownership in the principal  
 144 individually, the principal's estate, the principal's creditors,  
 145 or the creditors of the principal's estate. The term includes a  
 146 power of appointment not exercisable until the occurrence of a  
 147 specified event, the satisfaction of an ascertainable standard,  
 148 or the passage of a specified period only after the occurrence  
 149 of the specified event, the satisfaction of the ascertainable  
 150 standard, or the passage of the specified period. The term does  
 151 not include a power exercisable in a fiduciary capacity or only  
 152 by will.

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

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

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

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

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

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

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

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

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169 to read:

170 709.2103 Applicability.—This part applies to all powers of  
171 attorney except:

172 (1) A proxy or other delegation to exercise voting rights  
173 or management rights with respect to an entity;

174 (2) A power created on a form prescribed by a government  
175 or governmental subdivision, agency, or instrumentality for a  
176 governmental purpose;

177 (3) A power to the extent it is coupled with an interest  
178 in the subject of the power, including a power given to or for  
179 the benefit of a creditor in connection with a credit  
180 transaction; and

181 (4) A power created by a person other than an individual.

182 Section 6. Section 709.2104, Florida Statutes, is created  
183 to read:

184 709.2104 Durable power of attorney.—Except as otherwise  
185 provided under this part, a power of attorney is durable if it  
186 contains the words: "This durable power of attorney is not  
187 terminated by subsequent incapacity of the principal except as  
188 provided in chapter 709, Florida Statutes," or similar words  
189 that show the principal's intent that the authority conferred is  
190 exercisable notwithstanding the principal's subsequent  
191 incapacity.

192 Section 7. Section 709.2105, Florida Statutes, is created  
193 to read:

194 709.2105 Qualifications of agent; execution of power of  
195 attorney.—

196 (1) The agent must be a natural person who is 18 years of

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197 age or older or a financial institution that has trust powers,  
198 has a place of business in this state, and is authorized to  
199 conduct trust business in this state.

200 (2) A power of attorney must be signed by the principal  
201 and by two subscribing witnesses and be acknowledged by the  
202 principal before a notary public or as otherwise provided in s.  
203 695.03.

204 Section 8. Section 709.2106, Florida Statutes, is created  
205 to read:

206 709.2106 Validity of power of attorney.—

207 (1) A power of attorney executed on or after October 1,  
208 2011, is valid if its execution complies with s. 709.2105.

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

212 (3) A power of attorney executed in another state which  
213 does not comply with the execution requirements of this part is  
214 valid in this state if, when the power of attorney was executed,  
215 the power of attorney and its execution complied with the law of  
216 the state of execution. A third person who is requested to  
217 accept a power of attorney that is valid in this state solely  
218 because of this subsection may in good faith request, and rely  
219 upon, without further investigation, an opinion of counsel as to  
220 any matter of law concerning the power of attorney, including  
221 the due execution and validity of the power of attorney. An  
222 opinion of counsel requested under this subsection must be  
223 provided at the principal's expense. A third person may accept a  
224 power of attorney that is valid in this state solely because of



225 this subsection if the agent does not provide the requested  
 226 opinion of counsel, and in such case, a third person has no  
 227 liability for refusing to accept the power of attorney. This  
 228 subsection does not affect any other rights of a third person  
 229 who is requested to accept the power of attorney under this  
 230 part, or any other provisions of applicable law.

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

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

240 Section 9. Section 709.2107, Florida Statutes, is created  
 241 to read:

242 709.2107 Meaning and effectiveness of power of attorney.—  
 243 The meaning and effectiveness of a power of attorney is governed  
 244 by this part if the power of attorney:

245 (1) Is used in this state; or

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

248 Section 10. Section 709.2108, Florida Statutes, is created  
 249 to read:

250 709.2108 When power of attorney is effective.—

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

253        (2) If a power of attorney executed before October 1,  
254 2011, is conditioned on the principal's lack of capacity, and  
255 the power of attorney has not become exercisable before that  
256 date, the power of attorney is exercisable upon the delivery of  
257 the affidavit of a physician who has primary responsibility for  
258 the treatment and care of the principal and who is licensed to  
259 practice medicine pursuant to chapter 458 or chapter 459 as of  
260 the date of the affidavit. The affidavit must state where the  
261 physician is licensed to practice medicine, that the physician  
262 is the primary physician who has responsibility for the  
263 treatment and care of the principal, and that the physician  
264 believes that the principal lacks the capacity to manage  
265 property.

266        (3) Except as provided in subsection (2) and section  
267 709.2106(4), a power of attorney is ineffective if the power of  
268 attorney provides that it is to become effective at a future  
269 date or upon the occurrence of a future event or contingency.

270        Section 11. Section 709.2109, Florida Statutes, is created  
271 to read:

272        709.2109 Termination or suspension of power of attorney or  
273 agent's authority.—

274        (1) A power of attorney terminates when:

275        (a) The principal dies;

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

278        (c) The principal is adjudicated totally or partially  
279 incapacitated by a court, unless the court determines that  
280 certain authority granted by the power of attorney is to be

281 exercisable by the agent;

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

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

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

285 or

286 (g) The agent's authority terminates and the power of  
 287 attorney does not provide for another agent to act under the  
 288 power of attorney.

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

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

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

296 (c) The power of attorney terminates.

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

303 (a) If an emergency arises after initiation of proceedings  
 304 to determine incapacity and before adjudication regarding the  
 305 principal's capacity, the agent may petition the court in which  
 306 the proceeding is pending for authorization to exercise a power  
 307 granted under the power of attorney. The petition must set forth  
 308 the nature of the emergency, the property or matter involved,

309 and the power to be exercised by the agent.

310 (b) Notwithstanding the provisions of this section, unless  
311 otherwise ordered by the court, a proceeding to determine  
312 incapacity does not affect the authority of the agent to make  
313 health care decisions for the principal, including, but not  
314 limited to, those provided in chapter 765. If the principal has  
315 executed a health care advance directive designating a health  
316 care surrogate, the terms of the directive control if the  
317 directive and the power of attorney are in conflict unless the  
318 power of attorney is later executed and expressly states  
319 otherwise.

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

326 Section 12. Section 709.2110, Florida Statutes, is created  
327 to read:

328 709.2110 Revocation of power of attorney.-

329 (1) A principal may revoke a power of attorney by  
330 expressing the revocation in a subsequently executed power of  
331 attorney or other writing signed by the principal. The principal  
332 may give notice of the revocation to an agent who has accepted  
333 authority under the revoked power of attorney.

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

337 Section 13. Section 709.2111, Florida Statutes, is created  
338 to read:

339 709.2111 Co-agents and successor agents.—

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

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

347 (a) Has the same authority as that granted to the original  
348 agent; and

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

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

357 (4) An agent who has actual knowledge of a breach or  
358 imminent breach of fiduciary duty by another agent, including a  
359 predecessor agent, must take any action reasonably appropriate  
360 in the circumstances to safeguard the principal's best  
361 interests. If the agent in good faith believes that the  
362 principal is not incapacitated, giving notice to the principal  
363 is a sufficient action. An agent who fails to take action as  
364 required by this subsection is liable to the principal for the

365 principal's reasonably foreseeable damages that could have been  
366 avoided if the agent had taken such action.

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

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

381 Section 14. Section 709.2112, Florida Statutes, is created  
382 to read:

383 709.2112 Reimbursement and compensation of agent.—

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

387 (2) Unless the power of attorney otherwise provides, a  
388 qualified agent is entitled to compensation that is reasonable  
389 under the circumstances.

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

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

401        Section 15. Section 709.2113, Florida Statutes, is created  
402 to read:

403        709.2113 Agent's acceptance of appointment.—Except as  
404 otherwise provided in the power of attorney, a person accepts  
405 appointment as an agent by exercising authority or performing  
406 duties as an agent or by any other assertion or conduct  
407 indicating acceptance. The scope of an agent's acceptance is  
408 limited to those aspects of the power of attorney for which the  
409 agent's assertions or conduct reasonably manifests acceptance.

410        Section 16. Section 709.2114, Florida Statutes, is created  
411 to read:

412        709.2114 Agent's duties.—

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

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

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

420        2. Must act in good faith;

421 3. May not act in a manner that is contrary to the  
422 principal's best interest, except as provided in paragraph  
423 (2) (d) and s. 709.2202; and

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

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

429 b. The principal's foreseeable obligations and need for  
430 maintenance;

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

433 d. Eligibility for a benefit, a program, or assistance  
434 under a statute or rule; and

435 e. The principal's personal history of making or joining  
436 in making gifts;

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

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

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

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

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

447 (b) Act so as not to create a conflict of interest that  
448 impairs the agent's ability to act impartially in the



449 principal's best interest;

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

452 (d) Cooperate with a person who has authority to make  
453 health care decisions for the principal in order to carry out  
454 the principal's reasonable expectations to the extent actually  
455 known by the agent and, otherwise, act in the principal's best  
456 interest.

457 (3) An agent who acts in good faith is not liable to any  
458 beneficiary of the principal's estate plan for failure to  
459 preserve the plan.

460 (4) If an agent is selected by the principal because of  
461 special skills or expertise possessed by the agent or in  
462 reliance on the agent's representation that the agent has  
463 special skills or expertise, the special skills or expertise  
464 must be considered in determining whether the agent has acted  
465 with care, competence, and diligence under the circumstances.

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

468 (6) Except as otherwise provided in the power of attorney,  
469 an agent is not required to disclose receipts, disbursements,  
470 transactions conducted on behalf of the principal, or safe-  
471 deposit box inventories, unless ordered by a court or requested  
472 by the principal, a court-appointed guardian, another fiduciary  
473 acting for the principal, a governmental agency having authority  
474 to protect the welfare of the principal, or, upon the death of  
475 the principal, by the personal representative or successor in  
476 interest of the principal's estate. If requested, the agent must

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477 comply with the request within 60 days or provide a writing or  
478 other record substantiating why additional time is needed and  
479 comply with the request within an additional 60 days.

480 Section 17. Section 709.2115, Florida Statutes, is created  
481 to read:

482 709.2115 Exoneration of agent.—A power of attorney may  
483 provide that the agent is not liable for any acts or decisions  
484 made by the agent in good faith and under the power of attorney,  
485 except to the extent the provision:

486 (1) Relieves the agent of liability for breach of a duty  
487 committed dishonestly, with improper motive, or with reckless  
488 indifference to the purposes of the power of attorney or the  
489 best interest of the principal; or

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

492 Section 18. Section 709.2116, Florida Statutes, is created  
493 to read:

494 709.2116 Judicial relief; conflicts of interests.—

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

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

499 (a) The principal or the agent, including any nominated  
500 successor agent.

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

503 (c) A person authorized to make health care decisions for  
504 the principal if the health care of the principal is affected by

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505 the actions of the agent.

506 (d) Any other interested person if the person demonstrates  
507 to the court's satisfaction that the person is interested in the  
508 welfare of the principal and has a good faith belief that the  
509 court's intervention is necessary.

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

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

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

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

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

527 (b) In good faith in the principal's best interest, and  
528 the conflict of interest was expressly authorized in the power  
529 of attorney.

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

531 (a) A provision authorizing an agent to engage in a  
532 transaction affected by a conflict of interest which is inserted

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533 into a power of attorney as the result of the abuse of a  
534 fiduciary or confidential relationship with the principal by the  
535 agent or the agent's affiliate is invalid.

536 (b) Affiliates of an agent include:

537 1. The agent's spouse;

538 2. The agent's descendants, siblings, parents, or their  
539 spouses;

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

543 4. A person or entity that owns a significant interest in  
544 the agent; or

545 5. The agent acting in a fiduciary capacity for someone  
546 other than the principal.

547 Section 19. Section 709.2117, Florida Statutes, is created  
548 to read:

549 709.2117 Agent's liability.—An agent who violates this  
550 part is liable to the principal or the principal's successors in  
551 interest for the amount required to:

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

554 (2) Reimburse the principal or the principal's successors  
555 in interest for the attorney's fees and costs paid from the  
556 principal's funds on the agent's behalf in defense of the  
557 agent's actions.

558 Section 20. Section 709.2118, Florida Statutes, is created  
559 to read:

560 709.2118 Agent's resignation.—Unless the power of attorney

561 provides a different method for an agent's resignation, an agent  
 562 may resign by giving notice to the principal, to the guardian if  
 563 the principal is incapacitated and one has been appointed for  
 564 the principal, and to any co-agent, or if none, the next  
 565 successor agent.

566 Section 21. Section 709.2119, Florida Statutes, is created  
 567 to read:

568 709.2119 Acceptance of and reliance upon power of  
 569 attorney.—

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

576 1. The power of attorney were genuine, valid, and still in  
 577 effect;

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

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

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

587 1. The power of attorney is void, invalid, or terminated;  
 588 or

589           2. The purported agent's authority is void, invalid,  
 590 suspended, or terminated.

591           (2) A third person may require:

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

602           (b) An officer of a financial institution acting as agent  
 603 to execute a separate affidavit, or include in the form of the  
 604 affidavit, the officer's title and a statement that the officer  
 605 has full authority to perform all acts and enter into all  
 606 transactions authorized by the power of attorney for and on  
 607 behalf of the financial institution in its capacity as agent. A  
 608 written affidavit executed by the agent under this subsection  
 609 may, but need not, be in the following form:

610  
 611           STATE OF.....

612           COUNTY OF.....

613  
 614           Before me, the undersigned authority, personally appeared  
 615 ...(attorney in fact)... ("Affiant"), who swore or affirmed  
 616 that:

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

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

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

625 a. The Principal is not deceased;

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

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

632 4. The Affiant is acting within the scope of authority  
633 granted in the power of attorney.

634 5. The Affiant is the successor to ...(insert name of  
635 predecessor agent)..., who has resigned, died, become  
636 incapacitated, is no longer qualified to serve, has declined to  
637 serve as agent, or is otherwise unable to act, if applicable.

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

643  
644

.....

645 ... (Affiant)...

646  
 647 Sworn to (or affirmed) and subscribed before me this ....  
 648 day of ... (month) ..., ... (year) ..., by ... (name of person making  
 649 statement)...

650  
 651 ... (Signature of Notary Public-State of Florida)...

652  
 653 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

654  
 655 Personally Known OR Produced Identification  
 656 ... (Type of Identification Produced)...

657  
 658 (3) A third person who is asked to accept a power of  
 659 attorney that appears to be executed in accordance with s.  
 660 709.2103 may in good faith request, and rely upon, without  
 661 further investigation:

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

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

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

670 (4) An English translation or an opinion of counsel  
 671 requested under this section must be provided at the principal's  
 672 expense unless the request is made after the time specified in



673 s. 709.2120(1) for acceptance or rejection of the power of  
 674 attorney.

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

684 (6) The acts of an agent under a power of attorney are as  
 685 valid and binding on the principal or the principal's estate as  
 686 if the principal were alive and competent if, in connection with  
 687 any activity pertaining to hostilities in which the United  
 688 States is then engaged, the principal is officially listed or  
 689 reported by a branch of the United States Armed Forces in a  
 690 missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s.  
 691 5561, regardless of whether the principal is dead, alive, or  
 692 incompetent. Homestead property held as tenants by the  
 693 entireties may not be conveyed by a power of attorney regulated  
 694 under this provision until 1 year after the first official  
 695 report or listing of the principal as missing or missing in  
 696 action. An affidavit of an officer of the Armed Forces having  
 697 maintenance and control of the records pertaining to those  
 698 missing or missing in action that the principal has been in that  
 699 status for a given period is conclusive presumption of the fact.

700 Section 22. Section 709.2120, Florida Statutes, is created

701 to read:

702 709.2120 Refusal to accept power of attorney.-

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

704 (a) A third person must accept or reject a power of

705 attorney within a reasonable time. A third person who rejects a

706 power of attorney must state in writing the reason for the

707 rejection.

708 (b) Four days, excluding Saturdays, Sundays, and legal

709 holidays, are presumed to be a reasonable time for a financial

710 institution to accept or reject a power of attorney with respect

711 to:

712 1. A banking transaction, if the power of attorney

713 expressly contains authority to conduct banking transactions

714 pursuant to s. 709.2208(1); or

715 2. A security transaction, if the power of attorney

716 expressly contains authority to conduct security transactions

717 pursuant to s. 709.2208(2).

718 (c) A third person may not require an additional or

719 different form of power of attorney for authority granted in the

720 power of attorney presented.

721 (2) A third person is not required to accept a power of

722 attorney if:

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

724 in a transaction with the principal in the same circumstances;

725 (b) The third person has knowledge of the termination or

726 suspension of the agent's authority or of the power of attorney

727 before exercising the power;

728 (c) A timely request by the third person for an affidavit,

729 English translation, or opinion of counsel under s. 709.2119(4)  
 730 is refused by the agent;

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

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

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

742 (a) A court order mandating acceptance of the power of  
 743 attorney; and

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

748 Section 23. Section 709.2121, Florida Statutes, is created  
 749 to read:

750 709.2121 Notice.—

751 (1) A notice, including a notice of revocation, notice of  
 752 partial or complete termination by adjudication of incapacity or  
 753 by the occurrence of an event referenced in the power of  
 754 attorney, notice of death of the principal, notice of suspension  
 755 by initiation of proceedings to determine incapacity or to  
 756 appoint a guardian, or other notice, is not effective until

757 written notice is provided to the agent or any third persons  
 758 relying upon a power of attorney.

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

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

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

774 Section 24. Section 709.2201, Florida Statutes, is created  
 775 to read:

776 709.2201 Authority of agent.—

777 (1) Except as provided in this section or other applicable  
 778 law, an agent may only exercise authority specifically granted  
 779 to the agent in the power of attorney and any authority  
 780 reasonably necessary to give effect to that express grant of  
 781 specific authority. General provisions in a power of attorney  
 782 which do not identify the specific authority granted, such as  
 783 provisions purporting to give the agent authority to do all acts  
 784 that the principal can do, is not an express grant of specific

785 authority and does not grant any authority to the agent. Court  
786 approval is not required for any action of the agent in  
787 furtherance of an express grant of specific authority.

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

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

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

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

806 (3) Notwithstanding the provisions of this section, an  
807 agent may not:

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

810 (b) Make any affidavit as to the personal knowledge of the  
811 principal;

812 (c) Vote in any public election on behalf of the

813 principal;

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

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

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

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

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

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

833 709.2202 Authority that requires separate signed  
 834 enumeration.—

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

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- 841        (a) Create an inter vivos trust;
- 842        (b) With respect to a trust created by or on behalf of the  
843 principal, amend, modify, revoke, or terminate the trust, but  
844 only if the trust instrument explicitly provides for amendment,  
845 modification, revocation, or termination by the settlor's agent;
- 846        (c) Make a gift, subject to subsection (3);
- 847        (d) Create or change rights of survivorship;
- 848        (e) Create or change a beneficiary designation;
- 849        (f) Waive the principal's right to be a beneficiary of a  
850 joint and survivor annuity, including a survivor benefit under a  
851 retirement plan; or
- 852        (g) Disclaim property and powers of appointment.
- 853        (2) Notwithstanding a grant of authority to do an act  
854 described in subsection (1), unless the power of attorney  
855 otherwise provides, an agent who is not an ancestor, spouse, or  
856 descendant of the principal may not exercise authority to create  
857 in the agent, or in an individual to whom the agent owes a legal  
858 obligation of support, an interest in the principal's property,  
859 whether by gift, right of survivorship, beneficiary designation,  
860 disclaimer, or otherwise.
- 861        (3) Unless the power of attorney otherwise provides, a  
862 provision in a power of attorney granting general authority with  
863 respect to gifts authorizes the agent to only:
- 864        (a) Make outright to, or for the benefit of, a person a  
865 gift of any of the principal's property, including by the  
866 exercise of a presently exercisable general power of appointment  
867 held by the principal, in an amount per donee not to exceed the  
868 annual dollar limits of the federal gift tax exclusion under 26

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869 U.S.C. s. 2503(b), as amended, without regard to whether the  
870 federal gift tax exclusion applies to the gift, or if the  
871 principal's spouse agrees to consent to a split gift pursuant to  
872 26 U.S.C. s. 2513, as amended, in an amount per donee not to  
873 exceed twice the annual federal gift tax exclusion limit; and

874 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to  
875 the splitting of a gift made by the principal's spouse in an  
876 amount per donee not to exceed the aggregate annual gift tax  
877 exclusions for both spouses.

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



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

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

901 709.2208 Banks and other financial institutions.—

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

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

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

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

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

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

921 (f) Endorse and negotiate checks, cashier's checks,  
 922 official checks, drafts, and other negotiable paper of the  
 923 principal or payable to the principal or the principal's order,  
 924 transfer money, receive the cash or other proceeds of those

925 transactions, and accept a draft drawn by a person upon the  
 926 principal and pay it when due.

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

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

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

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

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

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

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

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

951 (e) Exercise voting rights with respect to investment  
 952 instruments in person or by proxy, enter into voting trusts, and

953 consent to limitations on the right to vote.

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

956  
 957 For purposes of this subsection, the term "investment  
 958 instruments" means stocks, bonds, mutual funds, and all other  
 959 types of securities and financial instruments, whether held  
 960 directly, indirectly, or in any other manner, including shares  
 961 or interests in a private investment fund, including, but not  
 962 limited to, a private investment fund organized as a limited  
 963 partnership, a limited liability company, a statutory or common  
 964 law business trust, a statutory trust, or a real estate  
 965 investment trust, joint venture, or any other general or limited  
 966 partnership; derivatives or other interests of any nature in  
 967 securities such as options, options on futures, and variable  
 968 forward contracts; mutual funds; common trust funds; money  
 969 market funds; hedge funds; private equity or venture capital  
 970 funds; insurance contracts; and other entities or vehicles  
 971 investing in securities or interests in securities whether  
 972 registered or otherwise, except commodity futures contracts and  
 973 call and put options on stocks and stock indexes.

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

976 709.2301 Principles of law and equity.—The common law of  
 977 agency and principles of equity supplement this part, except as  
 978 modified by this part or other state law.

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

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981 709.2302 Laws applicable to financial institutions and  
982 entities.—This part does not supersede any other law applicable  
983 to financial institutions or other entities, and that law  
984 controls if inconsistent with this part.

985 Section 29. Section 709.2303, Florida Statutes, is created  
986 to read:

987 709.2303 Remedies under other law.—The remedies under this  
988 part are not exclusive and do not abrogate any right or remedy  
989 under any other law other than this part.

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

992 709.2401 Relation to electronic signatures in federal  
993 law.—This part modifies, limits, and supersedes the federal  
994 Electronic Signatures in Global and National Commerce Act, 15  
995 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede  
996 s. 101(c) of that act, or authorize electronic delivery of any  
997 of the notices described in s. 103(b) of that act.

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

1000 709.2402 Effect on existing powers of attorney.—Except as  
1001 otherwise provided in this part:

1002 (1) This part applies to a power of attorney created on or  
1003 after October 1, 2011, and to acts of the agent occurring on or  
1004 after that date.

1005 (2) An act of the agent occurring before October 1, 2011,  
1006 is not affected by this part.

1007 Section 32. Subsection (5) of section 736.0602, Florida  
1008 Statutes, is amended to read:

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1009 |           736.0602 Revocation or amendment of revocable trust.—  
 1010 |           (5) A settlor's powers with respect to revocation,  
 1011 | amendment, or distribution of trust property may be exercised by  
 1012 | an agent under a power of attorney only as authorized by s.  
 1013 | 709.2202 ~~709.08~~.  
 1014 |           Section 33. Sections 709.01, 709.015, 709.08, and 709.11  
 1015 | Florida Statutes, are repealed.  
 1016 |           Section 34. This act shall take effect October 1, 2011.