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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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Senator Joyner moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (2) through (12) of section  
709.2102, Florida Statutes, are renumbered as subsections (3)  
through (13), respectively, present subsection (13) of that  
section is renumbered as subsection (15), new subsections (2)  
and (14) are added to that section, and present subsection (12)  
of that section is amended, to read:

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

(2) "Broker-dealer" means a broker-dealer registered with  
the United States Securities and Exchange Commission or the



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14 Commodity Futures Trading Commission if the broker-dealer is  
15 acting in that capacity.

16 (13)~~(12)~~ "Sign" means having present intent to authenticate  
17 or adopt a record to:

18 (a) Execute by signature or mark ~~or adopt a tangible~~  
19 ~~symbol~~; or

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

22 (14) "Another state" means a state of the United States,  
23 the District of Columbia, Puerto Rico, the United States Virgin  
24 Islands, or any territory or insular possession subject to the  
25 jurisdiction of the United States.

26 Section 2. Section 709.2103, Florida Statutes, is amended  
27 to read:

28 709.2103 Applicability.—This part applies to all powers of  
29 attorney except:

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

32 (2) A power created on a form prescribed by a government or  
33 governmental subdivision, agency, or instrumentality for a  
34 governmental purpose;

35 (3) A power to the extent it is coupled with an interest in  
36 the subject of the power, including a power given to or for the  
37 benefit of a creditor in connection with a credit transaction;  
38 ~~and~~

39 (4) A power created by a person other than an individual;

40 (5) A power given to a transfer agent to facilitate a  
41 specific transfer or disposition of one or more identified  
42 stocks, bonds, or other financial instruments;



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43           (6) A power authorizing a financial institution or broker-  
44 dealer, or an employee of the financial institution or broker-  
45 dealer, to act as agent for the account owner in executing  
46 trades or transfers of cash, securities, commodities, or other  
47 financial assets in the regular course of business; and

48           (7) A delegation of powers by a trustee in accordance with  
49 s. 736.0807.

50           Section 3. Subsection (3) is added to section 709.2105,  
51 Florida Statutes, to read:

52           709.2105 Qualifications of agent; execution of power of  
53 attorney.-

54           (3) If the principal is physically unable to sign the power  
55 of attorney, the notary public before whom the principal's oath  
56 or acknowledgment is made may sign the principal's name on the  
57 power of attorney pursuant to s. 117.05(14).

58           Section 4. Subsections (3) and (5) of section 709.2106,  
59 Florida Statutes, are amended, and subsection (6) is added to  
60 that section, to read:

61           709.2106 Validity of power of attorney.-

62           (3) A power of attorney executed in another state which  
63 does not comply with the execution requirements of this part is  
64 valid in this state if, when the power of attorney was executed,  
65 the power of attorney and its execution complied with the law of  
66 the state of execution. A third person who is requested to  
67 accept a power of attorney that is valid in this state solely  
68 because of this subsection may in good faith request, and rely  
69 upon, without further investigation, an opinion of counsel as to  
70 any matter of law concerning the power of attorney, including  
71 the due execution and validity of the power of attorney. An



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72 opinion of counsel requested under this subsection must be  
73 provided at the principal's expense. A third person may reject  
74 ~~accept~~ a power of attorney that is valid in this state solely  
75 because of this subsection if the agent does not provide the  
76 requested opinion of counsel, and in such case, a third person  
77 has no liability for rejecting ~~refusing to accept~~ the power of  
78 attorney. This subsection does not affect any other rights of a  
79 third person who is requested to accept the power of attorney  
80 under this part, or any other provisions of applicable law.

81 (5) Except as otherwise provided in the power of attorney,  
82 a photocopy or electronically transmitted copy of an original  
83 power of attorney has the same effect as the original.  
84 Notwithstanding this subsection, an original power of attorney  
85 that is relied upon to affect the title to real property may be  
86 required for recording in the official records.

87 (6) An original of a properly executed power of attorney  
88 may be presented to the clerk of the circuit court for recording  
89 in the official records as provided under s. 28.222 upon payment  
90 of the service charge as provided under s. 28.24.

91 Section 5. Paragraph (b) of subsection (1) of section  
92 709.2114, Florida Statutes, is amended to read:

93 709.2114 Agent's duties.—

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

96 (b) May not delegate authority to a third person except as  
97 authorized under ~~provided in~~ s. 518.112 or this part or by  
98 executing a power of attorney on a form prescribed by a  
99 government or governmental subdivision, agency, or  
100 instrumentality for a governmental purpose;



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101 Section 6. Subsection (3) of section 709.2116, Florida  
102 Statutes, is amended to read:

103 709.2116 Judicial relief; conflicts of interests.—

104 (3) In any proceeding commenced by filing a petition under  
105 this section, including, but not limited to, the unreasonable  
106 refusal of a third person to allow an agent to act pursuant to  
107 the power of attorney, and in challenges to the proper exercise  
108 of authority by the agent, the court shall award reasonable  
109 attorney ~~attorney's~~ fees and costs as in chancery actions.

110 Section 7. Subsections (2) and (3) of section 709.2119,  
111 Florida Statutes, are amended to read:

112 709.2119 Acceptance of and reliance upon power of  
113 attorney.—

114 (2) A third person may require:

115 (a) An agent to execute an affidavit stating where the  
116 principal is domiciled; that the principal is not deceased; that  
117 there has been no revocation, or partial or complete termination  
118 by adjudication of incapacity or by the occurrence of an event  
119 referenced in the power of attorney; that there has been no  
120 suspension by initiation of proceedings to determine incapacity,  
121 or to appoint a guardian, of the principal; that the agent's  
122 authority has not been terminated by the filing of an action for  
123 dissolution or annulment of marriage or legal separation of the  
124 agent and principal; and, if the affiant is a successor agent,  
125 the reasons for the unavailability of the predecessor agents, if  
126 any, at the time the authority is exercised.

127 (b) An officer of a financial institution acting as agent  
128 to execute a separate affidavit, or include in the form of the  
129 affidavit, the officer's title and a statement that the officer



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130 has full authority to perform all acts and enter into all  
131 transactions authorized by the power of attorney for and on  
132 behalf of the financial institution in its capacity as agent.

133 (c) A written affidavit executed by the agent under this  
134 subsection may, but need not, be in the following form:

135  
136 STATE OF.....

137 COUNTY OF.....

138  
139 Before me, the undersigned authority, personally appeared  
140 ...(agent) ~~(attorney in fact)~~... ("Affiant"), who swore or  
141 affirmed that:

142 1. Affiant is the agent ~~attorney in fact~~ named in the  
143 ~~Durable~~ Power of Attorney executed by ...(principal)...  
144 ("Principal") on ...(date)....

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

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

150 a. The Principal is not deceased;

151 b. Affiant's authority has not been suspended by initiation  
152 of proceedings to determine incapacity or to appoint a guardian  
153 or a guardian advocate;

154 c. Affiant's authority has not been terminated by the  
155 filing of an action for dissolution or annulment of Affiant's  
156 marriage to the principal, or their legal separation; and

157 d.e. There has been no revocation, or partial or complete  
158 termination, of the power of attorney or of Affiant's authority.





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188 of attorney if the power of attorney contains, in whole or in  
189 part, language other than English;

190 (b) An opinion of counsel as to any matter of law  
191 concerning the power of attorney if the third person making the  
192 request provides in a writing or other record the reason for the  
193 request; or

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

195 Section 8. Section 709.2120, Florida Statutes, is amended  
196 to read:

197 709.2120 Rejecting Refusal to accept power of attorney.—

198 ~~(1) Except as provided in subsection (2):~~

199 (1)(a) A third person must accept or reject a power of  
200 attorney within a reasonable time. ~~A third person who rejects a~~  
201 ~~power of attorney must state in writing the reason for the~~  
202 ~~rejection.~~

203 ~~(b)~~ Four days, excluding Saturdays, Sundays, and legal  
204 holidays, are presumed to be a reasonable time for a financial  
205 institution or broker-dealer to accept or reject a power of  
206 attorney with respect to:

207 (a)1. A banking transaction, if the power of attorney  
208 expressly contains authority to conduct banking transactions  
209 pursuant to s. 709.2208(1); or

210 (b)2. An investment ~~A security~~ transaction, if the power of  
211 attorney expressly contains authority to conduct investment  
212 ~~security~~ transactions pursuant to s. 709.2208(2).

213 (2)(e) A third person may not require an additional or  
214 different form of power of attorney for authority granted in the  
215 power of attorney presented.

216 (3) A third person who rejects a power of attorney for any





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217 reason other than as provided in paragraph (4) (a) must state in  
218 writing the reason for the rejection.

219 (4)~~(2)~~ A third person is not required to accept a power of  
220 attorney if:

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

223 (b) The third person has knowledge of the termination or  
224 suspension of the agent's authority or of the power of attorney  
225 before exercising the power;

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

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

232 (e) The third person makes, or has knowledge that another  
233 person has made, a report to the local adult protective services  
234 office stating a good faith belief that the principal may be  
235 subject to physical or financial abuse, neglect, exploitation,  
236 or abandonment by the agent or a person acting for or with the  
237 agent.

238 (5)~~(3)~~ A third person who, in violation of this section,  
239 rejects ~~refuses to accept~~ a power of attorney is subject to:

240 (a) A court order mandating acceptance of the power of  
241 attorney; and

242 (b) Liability for damages, including reasonable attorney  
243 ~~attorney's~~ fees and costs, incurred in any action or proceeding  
244 that confirms, for the purpose tendered, the validity of the  
245 power of attorney or mandates acceptance of the power of



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246 attorney.

247 Section 9. Subsection (3) of section 709.2121, Florida  
248 Statutes, is amended to read:

249 709.2121 Notice.—

250 (3) Notice to a financial institution or broker-dealer must  
251 contain the principal's name and address, and the last four  
252 digits of the principal's taxpayer identification number and be  
253 directed to an officer or a manager of the financial institution  
254 or broker-dealer in this state.

255 Section 10. Section 709.2202, Florida Statutes, is amended  
256 to read:

257 709.2202 Authority that requires separate signed  
258 enumeration.—

259 (1) Notwithstanding s. 709.2201, an agent may exercise the  
260 following authority only if the principal signed or initialed  
261 next to each specific enumeration of the authority, the exercise  
262 of the authority is consistent with the agent's duties under s.  
263 709.2114, and the exercise is not otherwise prohibited by  
264 another agreement or instrument:

265 (a) Create an inter vivos trust;

266 (b) With respect to a trust created by or on behalf of the  
267 principal, amend, modify, revoke, or terminate the trust, but  
268 only if the trust instrument explicitly provides for amendment,  
269 modification, revocation, or termination by the settlor's agent;

270 (c) Make a gift, subject to subsection (4) ~~(3)~~;

271 (d) Create or change rights of survivorship;

272 (e) Create or change a beneficiary designation;

273 (f) Waive the principal's right to be a beneficiary of a  
274 joint and survivor annuity, including a survivor benefit under a



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275 retirement plan; or

276 (g) Disclaim property and powers of appointment.

277 (2) In addition to signing the power of attorney on behalf  
278 of the principal pursuant to s. 709.2105(3), if the principal is  
279 physically unable to sign or initial next to any enumerated  
280 authority for which subsection (1) requires the principal to  
281 sign or initial, the notary public before whom the principal's  
282 oath or acknowledgment is made may sign the principal's name or  
283 initials if:

284 (a) The principal directs the notary to sign the  
285 principal's name or initials on the power of attorney next to  
286 any enumerated authority for which subsection (1) requires the  
287 principal to sign or initial;

288 (b) The signing or initialling by the notary is done in the  
289 presence of the principal and witnessed by two disinterested  
290 subscribing witnesses; and

291 (c) The notary writes the statement "Signature or initials  
292 affixed by the notary pursuant to s. 709.2202(2), Florida  
293 Statutes," below each signature or initial that the notary  
294 writes on behalf of the principal.

295  
296 Only one notarial certificate in substantially the same form as  
297 those described in s. 117.05(14), which states the circumstances  
298 of all signatures and initials written by the notary public, is  
299 required to be completed by the notary public.

300 (3) ~~(2)~~ Notwithstanding a grant of authority to do an act  
301 described in subsection (1), unless the power of attorney  
302 otherwise provides, an agent who is not an ancestor, spouse, or  
303 descendant of the principal may not exercise authority to create



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304 in the agent, or in an individual to whom the agent owes a legal  
305 obligation of support, an interest in the principal's property,  
306 whether by gift, right of survivorship, beneficiary designation,  
307 disclaimer, or otherwise.

308 ~~(4)~~(3) Unless the power of attorney otherwise provides, a  
309 provision in a power of attorney granting general authority with  
310 respect to gifts authorizes the agent to only:

311 (a) Make outright to, or for the benefit of, a person a  
312 gift of any of the principal's property, including by the  
313 exercise of a presently exercisable general power of appointment  
314 held by the principal, in an amount per donee per calendar year  
315 not to exceed the annual dollar limits of the federal gift tax  
316 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard  
317 to whether the federal gift tax exclusion applies to the gift,  
318 or if the principal's spouse agrees to consent to a split gift  
319 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per  
320 donee per calendar year not to exceed twice the annual federal  
321 gift tax exclusion limit; and

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

326 ~~(5)~~(4) Notwithstanding subsection (1), if a power of  
327 attorney is otherwise sufficient to grant an agent authority to  
328 conduct banking transactions, as provided in s. 709.2208(1),  
329 conduct investment transactions as provided in s. 709.2208(2),  
330 or otherwise make additions to or withdrawals from an account of  
331 the principal, making a deposit to or withdrawal from an  
332 insurance policy, retirement account, individual retirement



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333 account, benefit plan, bank account, or any other account held  
334 jointly or otherwise held in survivorship or payable on death,  
335 is not considered to be a change to the survivorship feature or  
336 beneficiary designation, and no further specific authority is  
337 required for the agent to exercise such authority. A ~~bank or~~  
338 ~~other~~ financial institution or broker-dealer does not have a  
339 duty to inquire as to the appropriateness of the agent's  
340 exercise of that authority and is not liable to the principal or  
341 any other person for actions taken in good faith reliance on the  
342 appropriateness of the agent's actions. This subsection does not  
343 eliminate the agent's fiduciary duties to the principal with  
344 respect to any exercise of the power of attorney.

345 (6) ~~(5)~~ This section does not apply to a power of attorney  
346 executed before October 1, 2011.

347 Section 11. Subsection (2) of section 709.2208, Florida  
348 Statutes, is amended to read:

349 709.2208 Banks and other financial institutions.—

350 (2) A power of attorney that specifically includes the  
351 statement that the agent has "authority to conduct investment  
352 transactions as provided in section 709.2208(2), Florida  
353 Statutes" grants general authority to the agent with respect to  
354 securities held by financial institutions or broker-dealers to  
355 take the following actions without additional specific  
356 enumeration in the power of attorney:

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

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

360 (c) Pledge investment instruments as security to borrow,  
361 pay, renew, or extend the time of payment of a debt of the



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362 principal.

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

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

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

370

371 For purposes of this subsection, the term "investment  
372 instruments" means stocks, bonds, mutual funds, and all other  
373 types of securities and financial instruments, whether held  
374 directly, indirectly, or in any other manner, including shares  
375 or interests in a private investment fund, including, but not  
376 limited to, a private investment fund organized as a limited  
377 partnership, a limited liability company, a statutory or common  
378 law business trust, a statutory trust, or a real estate  
379 investment trust, joint venture, or any other general or limited  
380 partnership; derivatives or other interests of any nature in  
381 securities such as options, options on futures, and variable  
382 forward contracts; mutual funds; common trust funds; money  
383 market funds; hedge funds; private equity or venture capital  
384 funds; insurance contracts; and other entities or vehicles  
385 investing in securities or interests in securities whether  
386 registered or otherwise, except commodity futures contracts and  
387 call and put options on stocks and stock indexes.

388 Section 12. This act shall take effect upon becoming a law.

389

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



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391 And the title is amended as follows:

392 Delete everything before the enacting clause  
393 and insert:

394 A bill to be entitled

395 An act relating to powers of attorney; amending s.  
396 709.2102, F.S.; revising and providing definitions;  
397 amending s. 709.2103, F.S.; providing additional  
398 exceptions to the applicability of specified power of  
399 attorney provisions; amending s. 709.2105, F.S.;  
400 authorizing a notary public to sign a principal's name  
401 on a power of attorney under certain circumstances;  
402 amending s. 709.2106, F.S.; clarifying and revising  
403 language; providing that an original power of attorney  
404 may be required under certain circumstances; providing  
405 that an original power of attorney may be recorded in  
406 the official records for a fee; amending s. 709.2114,  
407 F.S.; adding exceptions to a provision that prohibits  
408 an agent who has accepted appointment from delegating  
409 authority to a third person; amending s. 709.2116,  
410 F.S.; providing for the award of attorney fees and  
411 costs as in chancery actions; amending s. 709.2119,  
412 F.S.; authorizing a third person to require an agent  
413 to execute an affidavit stating that the agent's  
414 authority was not terminated because of certain  
415 circumstances; revising a form for affidavits;  
416 revising a cross-reference; revising terminology;  
417 amending s. 709.2120, F.S.; conforming provisions to  
418 changes made by the act; requiring a third person who  
419 rejects a power of attorney for certain reasons to



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420 state the reason for the rejection in writing;  
421 amending s. 709.2121, F.S.; providing for notice to a  
422 broker-dealer; amending s. 709.2202, F.S.; authorizing  
423 a notary to sign the principal's name to documents,  
424 other than the power of attorney, under certain  
425 circumstances; clarifying that certain gift amounts  
426 are based on the calendar year; specifying that a  
427 broker-dealer does not have a duty to inquire into  
428 certain actions by an agent and is not liable for  
429 actions taken in good faith reliance on an agent's  
430 actions; amending s. 709.2208, F.S.; providing that an  
431 agent acquires general authority regarding securities  
432 held by broker-dealers under certain circumstances;  
433 providing an effective date.