

**SUBSTITUTE FOR  
SENATE BILL NO. 92**

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending section 5501 (MCL 700.5501).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5501. **(1)** A durable power of attorney is a power of  
2 attorney by which a principal designates another as the  
3 principal's attorney in fact in **A** writing ~~and the writing~~ **THAT**  
4 contains the words "This power of attorney is not affected by the  
5 principal's subsequent disability or incapacity, or by the lapse  
6 of time", or "This power of attorney is effective upon the  
7 disability or incapacity of the principal", or similar words  
8 showing the principal's intent that the authority conferred is  
9 exercisable notwithstanding the principal's subsequent disability

1 or incapacity and, unless the power states a termination time,  
2 notwithstanding the lapse of time since the execution of the  
3 instrument.

4 (2) AN ATTORNEY-IN-FACT DESIGNATED AND ACTING UNDER A  
5 DURABLE POWER OF ATTORNEY HAS THE AUTHORITY, RIGHTS,  
6 RESPONSIBILITIES, AND LIMITATIONS AS PROVIDED BY LAW, INCLUDING,  
7 BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

8 (A) THE ATTORNEY-IN-FACT SHALL ACT IN ACCORDANCE WITH THE  
9 STANDARDS OF CARE APPLICABLE TO FIDUCIARIES EXERCISING POWERS  
10 UNDER A DURABLE POWER OF ATTORNEY.

11 (B) THE ATTORNEY-IN-FACT SHALL TAKE REASONABLE STEPS TO  
12 FOLLOW THE INSTRUCTIONS OF THE PRINCIPAL.

13 (C) THE ATTORNEY-IN-FACT SHALL KEEP THE PRINCIPAL INFORMED  
14 OF THE ATTORNEY-IN-FACT'S ACTIONS. ON REQUEST MADE AT ANY TIME,  
15 THE ATTORNEY-IN-FACT SHALL PROVIDE AN ACCOUNTING TO THE  
16 PRINCIPAL, A CONSERVATOR OR GUARDIAN APPOINTED ON BEHALF OF THE  
17 PRINCIPAL, AND TO OTHERS AS REQUIRED BY THE DURABLE POWER OF  
18 ATTORNEY, THIS ACT, OR JUDICIAL ORDER.

19 (D) THE ATTORNEY-IN-FACT SHALL NOT MAKE A GIFT OF THE  
20 PRINCIPAL'S ASSETS, UNLESS PROVIDED FOR IN THE DURABLE POWER OF  
21 ATTORNEY.

22 (E) UNLESS PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY,  
23 THE ATTORNEY-IN-FACT SHALL NOT CREATE AN "IN TRUST FOR", ALSO  
24 KNOWN AS PAYABLE-ON-DEATH, ACCOUNT, OR MAKE, CHANGE, OR DELETE A  
25 TRANSFER-ON-DEATH OR PAYABLE-ON-DEATH DESIGNATION CONCERNING THE  
26 PRINCIPAL'S ASSETS, IF THE ACTION WOULD ALTER THE PAYABLE-ON-  
27 DEATH DESIGNATION.

1 (F) THE ATTORNEY-IN-FACT SHALL NOT COMMINGLE THE PRINCIPAL'S  
2 ASSETS WITH THE ATTORNEY-IN-FACT'S ASSETS UNLESS PROVIDED FOR IN  
3 THE DURABLE POWER OF ATTORNEY OR UNLESS THE ATTORNEY-IN-FACT IS  
4 THE PRINCIPAL'S SPOUSE OR ANCESTOR OR DESCENDANT BY BLOOD OR  
5 ADOPTION.

6 (G) THE ATTORNEY-IN-FACT SHALL MAINTAIN RECORDS OF THE  
7 ATTORNEY-IN-FACT'S ACTIONS ON BEHALF OF THE PRINCIPAL, INCLUDING  
8 TRANSACTIONS, RECEIPTS, DISBURSEMENTS, AND INVESTMENTS.

9 (H) THE ATTORNEY-IN-FACT MAY BE LIABLE FOR ANY LOSS TO THE  
10 PRINCIPAL FOR ANY ACTION TAKEN BY THE ATTORNEY-IN-FACT ON BEHALF  
11 OF THE PRINCIPAL THAT IS NOT PROVIDED FOR IN THE DURABLE POWER OF  
12 ATTORNEY.

13 (I) THE ATTORNEY-IN-FACT MAY RECEIVE REASONABLE COMPENSATION  
14 FOR THE ATTORNEY-IN-FACT'S SERVICES IF PROVIDED FOR IN THE  
15 DURABLE POWER OF ATTORNEY.

16 (3) BEFORE EXERCISING AUTHORITY UNDER A DURABLE POWER OF  
17 ATTORNEY, AN ATTORNEY-IN-FACT SHALL EXECUTE AN ACCEPTANCE OF THE  
18 ATTORNEY-IN-FACT'S OBLIGATIONS THAT CONTAINS ALL OF THE  
19 SUBSTANTIVE STATEMENTS IN SUBSTANTIALLY THE FOLLOWING FORM:

20 I, \_\_\_\_\_, HAVE BEEN APPOINTED AS ATTORNEY-IN-FACT  
21 FOR \_\_\_\_\_, THE PRINCIPAL, UNDER A DURABLE POWER OF  
22 ATTORNEY DATED \_\_\_\_\_. BY SIGNING THIS DOCUMENT, I ACCEPT  
23 THAT WHEN I ACT AS ATTORNEY-IN-FACT, ALL OF THE FOLLOWING APPLY:

24 (A) I MUST ACT IN ACCORDANCE WITH THE STANDARDS OF CARE  
25 APPLICABLE TO FIDUCIARIES ACTING UNDER DURABLE POWERS OF  
26 ATTORNEY.

27 (B) I MUST TAKE REASONABLE STEPS TO FOLLOW THE INSTRUCTIONS

1 OF THE PRINCIPAL.

2 (C) I MUST KEEP THE PRINCIPAL INFORMED OF MY ACTIONS AND  
3 ACCOUNT TO THE PRINCIPAL OR OTHERS AS REQUIRED BY LAW.

4 (D) I CANNOT MAKE A GIFT FROM THE PRINCIPAL'S PROPERTY,  
5 UNLESS PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY.

6 (E) I CANNOT CREATE AN "IN TRUST FOR", ALSO KNOWN AS  
7 PAYABLE-ON-DEATH, ACCOUNT, OR MAKE, CHANGE, OR DELETE A TRANSFER-  
8 ON-DEATH OR PAYABLE-ON-DEATH DESIGNATION CONCERNING THE  
9 PRINCIPAL'S ASSETS, IF THE ACTION WOULD ALTER THE PAYABLE-ON-  
10 DEATH DESIGNATION, UNLESS PROVIDED FOR IN THE DURABLE POWER OF  
11 ATTORNEY.

12 (F) I CANNOT COMMINGLE THE PRINCIPAL'S ASSETS WITH MY ASSETS  
13 UNLESS PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY OR UNLESS I  
14 AM THE PRINCIPAL'S SPOUSE OR ANCESTOR OR DESCENDANT BY BLOOD OR  
15 ADOPTION.

16 (G) I MUST MAINTAIN RECORDS OF MY TRANSACTIONS AS ATTORNEY-  
17 IN-FACT, INCLUDING RECEIPTS, DISBURSEMENTS, AND INVESTMENTS.

18 (H) I MAY BE LIABLE FOR ANY LOSS TO THE PRINCIPAL FOR ANY  
19 ACTION I TAKE THAT IS NOT PROVIDED FOR IN THE DURABLE POWER OF  
20 ATTORNEY.

21 (I) I MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IF I  
22 VIOLATE MY DUTIES TO THE PRINCIPAL.

23 \_\_\_\_\_ DATE: \_\_\_\_\_  
24 (NAME)

25 (4) A THIRD PARTY IS NOT LIABLE TO THE PRINCIPAL OR ANY  
26 OTHER PERSON BECAUSE THE THIRD PARTY HAS COMPLIED WITH

## Senate Bill No. 92 as amended April 28, 2011

1 INSTRUCTIONS FROM AN ATTORNEY-IN-FACT NAMED IN A DURABLE POWER OF  
2 ATTORNEY WHO HAS NOT EXECUTED AN ACCEPTANCE THAT COMPLIES WITH  
3 SUBSECTION (3). A THIRD PARTY IS NOT LIABLE TO THE PRINCIPAL OR  
4 ANY OTHER PERSON IF THE THIRD PARTY REQUIRES AN ATTORNEY-IN-FACT  
5 NAMED IN A DURABLE POWER OF ATTORNEY TO EXECUTE AN ACCEPTANCE  
6 THAT COMPLIES WITH SUBSECTION (3) BEFORE RECOGNIZING THE DURABLE  
7 POWER OF ATTORNEY.

8 (5) AN ATTORNEY-IN-FACT'S FAILURE TO COMPLY WITH SUBSECTION  
9 (3) DOES NOT AFFECT THE ATTORNEY-IN-FACT'S RESPONSIBILITIES AND  
10 POTENTIAL LIABILITY TO THE PRINCIPAL.

11 (6) SUBSECTIONS (2) <<THROUGH (5)>> DO NOT APPLY TO ANY OF THE  
12 FOLLOWING:

13 (A) A DURABLE POWER OF ATTORNEY EXECUTED BEFORE APRIL 1,  
14 2012. (B) A DELEGATION UNDER SECTION 5103 OR A SIMILAR POWER OF  
15 ATTORNEY CREATED BY A PARENT OR GUARDIAN REGARDING THE CARE,  
16 CUSTODY, OR PROPERTY OF A MINOR CHILD OR WARD.

17 (C) A PATIENT ADVOCATE DESIGNATION OR A SIMILAR POWER OF  
18 ATTORNEY RELATING TO THE PRINCIPAL'S HEALTH CARE.

19 (D) A DURABLE POWER OF ATTORNEY THAT IS COUPLED WITH AN  
20 INTEREST IN THE SUBJECT MATTER OF THE POWER.

21 (E) A DURABLE POWER OF ATTORNEY THAT IS CONTAINED IN OR IS  
22 PART OF A LOAN AGREEMENT, SECURITY AGREEMENT, ESCROW AGREEMENT,  
23 JOINT VENTURE AGREEMENT, LICENSE AGREEMENT, PROXY, SHAREHOLDER'S  
24 AGREEMENT, OPERATING AGREEMENT FOR A LIMITED LIABILITY COMPANY,  
25 PARTNERSHIP AGREEMENT, OR OTHER AGREEMENT THAT PRIMARILY RELATES  
26 TO A SIMILAR ENTITY.

27 (7) SUBSECTIONS (2) TO (5) ONLY APPLY TO A DURABLE POWER OF

1 ATTORNEY EXECUTED ON OR AFTER APRIL 1, 2012.