

House Bill 221

By: Representatives Efration of the 104th, Willard of the 51st, England of the 116th, Cooper of the 43rd, Morris of the 156th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to
2 agency, so as to update and conform provisions relating to powers of attorney to a uniform
3 Act; to provide for definitions; to authorize and expound on the use of powers of attorney and
4 financial powers of attorney; to authorize principals to perform certain actions; to revise
5 provisions relating to conditional powers of attorney; to authorize persons to petition a court
6 of competent jurisdiction to construe a power of attorney; to prohibit provisions that relieve
7 an agent of liability in certain circumstances; to provide for requirements for agents; to
8 provide for a standard of care for an agent; to provide recourse for breach of fiduciary duties;
9 to provide for termination of an agency relationship and powers of an agent; to provide for
10 acceptance of acknowledgment of power of attorney; to provide for effectiveness of powers
11 of attorney executed in other states; to provide for limitations on the authority of an agent for
12 a financial power of attorney; to provide for execution of financial powers of attorney; to
13 provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to agency, is
17 amended by adding a new Code section to read as follows:

18 "10-6-0.1.

19 As used in this chapter, the term:

20 (1) 'Agent' means a person granted authority to act for a principal under a power of
21 attorney, whether denominated as an agent, attorney in fact, or otherwise. The term
22 includes an original agent, coagent, successor agent, and person to which an agent's
23 authority is delegated.

24 (2) 'Incapacitated' means the adult lacks sufficient capacity to make or communicate
25 significant responsible decisions concerning the management of his or her property.

26 (3) 'Power of attorney' means a writing or other record that grants authority to an agent
 27 to act in the place of the principal, whether or not such term is used.

28 (4) 'Principal' means an individual who grants authority to an agent in a power of
 29 attorney."

30 **SECTION 2.**

31 Said chapter is further amended by revising Code Section 10-6-1, relating to when agency
 32 relationship arises, as follows:

33 "10-6-1.

34 (a) The relation of principal and agent arises wherever one person, expressly or by
 35 implication, authorizes another to act for him or her or subsequently ratifies the acts of
 36 another in his or her behalf. A power of attorney and financial power of attorney are types
 37 of agency relationships, but they are not the exclusive type of agency relationship that can
 38 be created under the laws of this state.

39 (b) A principal creating a power of attorney or financial power of attorney may designate
 40 two or more persons to act as coagents. Unless the power of attorney or financial power
 41 of attorney otherwise provides, each coagent may exercise his, her, or its authority
 42 independently.

43 (c) A principal creating a power of attorney or financial power of attorney may designate
 44 one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not
 45 qualified to serve, or declines to serve. A principal may grant authority to designate one
 46 or more successor agents to an agent or other person designated by name, office, or
 47 function. Unless the power of attorney or financial power of attorney otherwise provides,
 48 a successor agent:

49 (1) Has the same authority as that granted to the original agent; and

50 (2) May not act until all predecessor agents have resigned, have died, have become
 51 incapacitated, are no longer qualified to serve, or have declined to serve."

52 **SECTION 3.**

53 Said chapter is further amended by revising Code Section 10-6-4, relating to fiduciaries may
 54 convey by attorneys in fact, as follows:

55 "10-6-4.

56 (a) Executors, administrators, guardians, conservators, and trustees are authorized to sell
 57 and convey property by attorneys in fact in all cases where they may lawfully sell and
 58 convey in person.

59 (b) In a power of attorney or financial power of attorney, a principal may nominate a
 60 conservator or guardian of the principal's estate or person for consideration by a court of

61 competent jurisdiction if protective proceedings for the principal's estate or person are
 62 begun after the principal executes the power of attorney or financial power of attorney. If,
 63 after a principal executes a power of attorney or financial power of attorney, a court
 64 appoints a conservator or guardian of the principal's estate or other fiduciary charged with
 65 the management of some or all of the principal's property, the agent is accountable to the
 66 fiduciary as well as to the principal.

67 (c) An agent for hire shall, where applicable or contained in the power of attorney or
 68 financial power of attorney, attempt to preserve the principal's estate plan, to the extent
 69 actually known by the agent, if preserving the plan is consistent with the principal's best
 70 interest based on all relevant factors, including:

71 (1) The value and nature of the principal's property;

72 (2) The principal's foreseeable obligations and need for maintenance;

73 (3) Minimization of taxes, including income, estate, inheritance, generation-skipping
 74 transfer, and gift taxes; and

75 (4) Eligibility for a benefit, program, or assistance under a statute or regulation."

76 **SECTION 4.**

77 Said chapter is further amended by revising Code Section 10-6-6, relating to conditional
 78 power of attorney, as follows:

79 "10-6-6.

80 (a) As used in this Code section, the term 'conditional power of attorney' means a written
 81 power of attorney stating that it becomes effective at a specified future time or on the
 82 occurrence of a specified event or contingency, including, but not limited to, the
 83 subsequent incapacity of the principal. A conditional power of attorney includes a
 84 conditional financial power of attorney.

85 (b) In a conditional power of attorney, the principal may designate one or more persons
 86 who, by a written declaration under penalty of false swearing, have the power to determine
 87 conclusively that the specified event or contingency has occurred. The principal may
 88 designate the attorney in fact or another person to perform this function, either alone or
 89 jointly with other persons. If a conditional power of attorney becomes effective upon the
 90 principal's incapacity and the principal has not authorized a person to determine whether
 91 the principal is incapacitated, or the person authorized is unable or unwilling to make the
 92 determination, the conditional power of attorney becomes effective upon a determination
 93 in writing or other record by:

94 (1) A physician or psychologist that the principal is incapacitated; or

95 (2) An attorney at law, a judge, or an appropriate government official that the principal
 96 is incapacitated.

97 (c) A power of attorney containing the designation described in subsection (b) of this Code
 98 section becomes effective when the person or persons designated in the power of attorney
 99 execute a written declaration under penalty of false swearing that the specified event or
 100 contingency has occurred; and any person may act in reliance on the written declaration
 101 without liability to the principal or to any other person, regardless of whether the specified
 102 event or contingency has actually occurred.

103 (d) This Code section shall apply to a power of attorney whether executed before, on, or
 104 after July 1, 1993, if the power of attorney contains the designation described in subsection
 105 (b) of this Code section.

106 (e) A person authorized by the principal in the conditional power of attorney to determine
 107 that the principal is incapacitated may act as the principal's personal representative pursuant
 108 to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of
 109 the Social Security Act, 42 U.S.C. Section 1320d, and applicable regulations, to obtain
 110 access to the principal's health care information and communicate with the principal's
 111 health care providers.

112 ~~(e)~~(f) Subsections (b) and (c) of this Code section do not provide the exclusive method by
 113 which a power of attorney may be limited to take effect upon the occurrence of a specified
 114 event or contingency."

115 SECTION 5.

116 Said chapter is further amended by adding a new Code section to read as follows:

117 "10-6-7.

118 (a) Unless prohibited by the power of attorney or financial power of attorney, the
 119 following persons may petition a court of competent jurisdiction to construe a power of
 120 attorney or financial power of attorney and grant appropriate relief:

121 (1) The principal or agent;

122 (2) A guardian, conservator, or other fiduciary acting for the principal;

123 (3) A person authorized to make health care decisions for the principal;

124 (4) The principal's spouse, parent, or descendant;

125 (5) An individual who would qualify as a presumptive heir to the principal;

126 (6) A person named as a beneficiary to receive any property, benefit, or contractual right
 127 upon the principal's death or as a beneficiary of a trust created by or for the principal that
 128 has a financial interest in the principal's estate;

129 (7) The principal's caregiver or another person that demonstrates sufficient interest in the
 130 principal's welfare; and

131 (8) A person asked to accept the power of attorney, including a financial power of
 132 attorney.

133 (b) Upon motion by the principal, the court shall dismiss a petition filed under this Code
 134 section unless the court finds that the principal lacks capacity to revoke the agent's
 135 authority granted by a power of attorney or financial power of attorney.

136 (c) The rights and remedies established by this Code section shall be cumulative to those
 137 existing in law and shall not provide the exclusive means to challenge a power of attorney
 138 or financial power of attorney."

139 **SECTION 6.**

140 Said chapter is further amended by revising Code Section 10-6-20, relating to rights under
 141 agency for illegal purpose, as follows:

142 "10-6-20.

143 (a) No rights shall arise to either party out of an agency created for an illegal purpose.

144 (b) In addition to subsection (a) of this Code section, any provision in a power of attorney
 145 or financial power of attorney that seeks to relieve an agent of liability for breach of duty
 146 is binding on the principal and the principal's successors in interest except to the extent the
 147 provision:

148 (1) Relieves the agent of liability for breach of duty committed dishonestly, with an
 149 improper motive, or with reckless indifference to the purposes of the power of attorney
 150 or financial power of attorney or the best interest of the principal; or

151 (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with
 152 the principal."

153 **SECTION 7.**

154 Said chapter is further amended by revising Code Section 10-6-21, relating to extent of
 155 agent's authority and liability for exceeding, violating, or disregarding instructions, as
 156 follows:

157 "10-6-21.

158 (a) The agent shall act within the authority granted to him or her, reasonably interpreted;
 159 if he or she shall exceed or violate his or her instructions, he or she does it at his or her own
 160 risk, the principal having the privilege of affirming or dissenting, as his or her interest may
 161 dictate. In cases where the power is coupled with an interest in the agent, unreasonable
 162 instructions, detrimental to the agent's interest, may be disregarded.

163 (b) Except as otherwise provided in the power of attorney or financial power of attorney,
 164 an agent is not required to disclose receipts, disbursements, or transactions conducted on
 165 behalf of the principal unless ordered by a court of competent jurisdiction or requested by
 166 the principal, the principal's lawful guardian, conservator, or another fiduciary acting for
 167 the principal; a governmental agency having authority to protect the welfare of the

168 principal; or, upon the death of the principal, the successor in interest of the principal's
 169 estate, personal representative, or executor. If so requested, within 30 days, the agent shall
 170 comply with the request or provide a writing or other record substantiating why additional
 171 time is needed and shall comply with the request within an additional 30 days.

172 (c) The agent shall, to the extent such person is actually known by the agent, cooperate
 173 with a person that has been designated in an advance directive for health care to act on
 174 behalf of the principal."

175 **SECTION 8.**

176 Said chapter is further amended by revising Code Section 10-6-22, relating to diligence
 177 required of agent, as follows:

178 "10-6-22.

179 (a) An agent for hire shall be bound to exercise, about the business of his or her principal,
 180 that ordinary care, skill, and diligence required of a bailee for hire. A voluntary agent,
 181 without hire or reward, shall be liable only for gross neglect.

182 (b) If an agent identified in a power of attorney or financial power of attorney is selected
 183 by the principal because of special skills or expertise possessed by the agent or in reliance
 184 on the agent's representation that the agent has special skills or expertise, the special skills
 185 or expertise must be considered in determining whether the agent has acted with the level
 186 of care imposed by subsection (a) of this Code section.

187 (c) An agent identified in a power of attorney or financial power of attorney that acts with
 188 the required level of care, skill, and diligence and in the best interest of the principal is not
 189 liable solely because the agent also benefits from the act or has an individual or conflicting
 190 interest, not prohibited by this chapter, in relation to the property or affairs of the principal.

191 (d) An agent identified in a power of attorney or financial power of attorney that is found
 192 liable for violating this Code section shall reimburse the principal or the principal's
 193 successors in interest for the attorney's fees and costs that arise as a result of the agent's acts
 194 or omissions."

195 **SECTION 9.**

196 Said chapter is further amended by revising Code Section 10-6-30, relating to agents and
 197 fiduciaries to keep accounts and effect of neglect, as follows:

198 "10-6-30.

199 (a) It shall be the duty of agents, trustees, administrators, guardians, conservators,
 200 receivers, and all other fiduciaries to keep their accounts in a regular manner and to be
 201 always ready with them supported by proper vouchers; neglect of this duty shall be ground
 202 for charging them with interest on balances on hand and with costs.

203 (b) Except as otherwise provided in a power of attorney or financial power of attorney, a
 204 relationship created by the power of attorney or financial power of attorney that does not
 205 participate in or conceal a breach of fiduciary duty committed by another agent to the same
 206 principal, including a predecessor agent, is not liable for the actions of the other agent.

207 (c) An agent empowered by a power of attorney or financial power of attorney that has
 208 actual knowledge of a breach or imminent breach of fiduciary duty by another agent to the
 209 same principal shall notify the principal and, if the principal is incapacitated, take any
 210 action reasonably appropriate in the circumstances to safeguard the principal's best interest.

211 An agent described in this Code section that fails to notify the principal or take action as
 212 required by this subsection is liable for the reasonably foreseeable damages that could have
 213 been avoided if the agent had notified the principal or taken such action."

214 **SECTION 10.**

215 Said chapter is further amended by revising Code Section 10-6-33, relating to when and how
 216 a revocation of agency is done, as follows:

217 "10-6-33.

218 (a) Generally, an agency is revocable at the will of the principal. The appointment of a
 219 new agent for the performance of the same act or the death of either principal or agent
 220 revokes the power. If, however, the power is coupled with an interest in the agent himself
 221 or herself, it is not revocable at will. In all cases, the agent may recover from the principal,
 222 for an unreasonable revocation, any damages he or she may have suffered by reason
 223 thereof.

224 (b) In the case of an agency relationship created by a power of attorney or financial power
 225 of attorney:

226 (1) The agency relationship also terminates when:

227 (A) The principal dies;

228 (B) The principal revokes the power of attorney or financial power of attorney.

229 Generally, an agency is revocable at the will of the principal. The appointment of a
 230 new agent for the performance of the same act or the death of either principal or agent
 231 revokes the power. If, however, the power is coupled with an interest in the agent
 232 himself or herself, it is not revocable at will;

233 (C) The power of attorney or financial power of attorney provides that it terminates;

234 (D) The purpose of the power of attorney or financial power of attorney is
 235 accomplished; or

236 (E) The principal revokes the agent's authority, or the agent dies, becomes
 237 incapacitated, or resigns, and the power of attorney does not provide for another agent
 238 to act under the power of attorney or financial power of attorney;

- 239 (2) An agent's authority terminates when:
 240 (A) The principal revokes the authority;
 241 (B) The agent dies, becomes incapacitated, or resigns;
 242 (C) An action is filed for the dissolution or annulment of the agent's marriage to the
 243 principal or their legal separation, unless the power of attorney otherwise provides; or
 244 (D) The power of attorney or financial power of attorney terminates;
 245 (3) Unless the power of attorney or financial power of attorney otherwise provides, an
 246 agent's authority is exercisable until the authority terminates under this subsection,
 247 notwithstanding a lapse of time since the execution of the power of attorney or financial
 248 power of attorney;
 249 (4) Termination of an agent's authority or of a power of attorney or financial power of
 250 attorney is not effective as to the agent or another person that, without actual knowledge
 251 of the termination, acts in good faith under the power of attorney or financial power of
 252 attorney. An act so performed, unless otherwise invalid or unenforceable, binds the
 253 principal and the principal's successors in interest;
 254 (5) Unless provided for in the power of attorney or financial power of attorney,
 255 incapacity of the principal of a power of attorney or financial power of attorney shall not
 256 terminate the agency relationship; and
 257 (6) An agent may resign by giving notice to the principal and, if the principal is
 258 incapacitated:
 259 (A) To the principal's other legal representative, if any, and a coagent or successor
 260 agent;
 261 (B) If there is no person described in subparagraph (A) of this paragraph, then to:
 262 (i) The principal's caregiver;
 263 (ii) Another person reasonably believed by the agent to have sufficient interest in the
 264 principal's welfare; or
 265 (iii) A governmental agency having jurisdiction to protect the welfare of the
 266 principal; or
 267 (C) If there is no person described in either subparagraph (A) or (B) of this paragraph,
 268 by petitioning a court of competent jurisdiction for a declaration of resignation."

269 **SECTION 11.**

270 Said chapter is further amended by adding new Code sections to read as follows:

271 "10-6-90.

- 272 (a) A person that in good faith accepts an acknowledged power of attorney or financial
 273 power of attorney without actual knowledge that the signature is not genuine may presume
 274 it is a valid signature if it is notarized.

275 (b) A person that in good faith accepts a notarized power of attorney or financial power
276 of attorney without actual knowledge that the power of attorney is void, invalid, or
277 terminated, that the purported agent's authority is void, invalid, or terminated, or that the
278 agent is exceeding or improperly exercising the agent's authority may rely upon the power
279 of attorney or financial power of attorney as if the power of attorney or financial power of
280 attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid,
281 and still in effect, and the agent had not exceeded and had properly exercised the duty.

282 (c) A person that is asked to accept a notarized power of attorney may request, and rely
283 upon, without further investigation:

284 (1) An agent's certification under penalty of perjury of any factual matter concerning the
285 principal, agent, power of attorney, or financial power of attorney;

286 (2) An English translation of the power of attorney or financial power of attorney if the
287 power of attorney contains, in whole or in part, language other than English; and

288 (3) An opinion of counsel as to any matter of law concerning the power of attorney or
289 financial power of attorney if the person making the request provides in a writing or other
290 record the reason for the request.

291 (d) An English translation or an opinion of counsel requested pursuant to this Code section
292 must be provided at the principal's expense unless the request is made more than seven
293 business days after the power of attorney or financial power of attorney is presented for
294 acceptance.

295 (e) For the purposes of this Code section, a person that conducts activities through
296 employees is without actual knowledge of a fact relating to a power of attorney, financial
297 power of attorney, principal, or agent if the employee conducting the transaction involving
298 the power of attorney or financial power of attorney is without actual knowledge of the
299 fact.

300 10-6-91.

301 (a) Except as provided in subsection (b) of this Code section:

302 (1) A person shall either accept a notarized power of attorney or financial power of
303 attorney or request a certification, translation, or opinion of counsel pursuant to Code
304 Section 10-6-90 no later than seven business days after presentation of the verified power
305 of attorney or financial power of attorney for acceptance;

306 (2) If a person requests a certification, translation, or opinion of counsel pursuant to
307 Code Section 10-6-90, the person shall accept the power of attorney or financial power
308 of attorney no later than five business days after receipt of the certification, translation,
309 or opinion of counsel; and

310 (3) A person may not require an additional or different form of power of attorney or
 311 financial power of attorney for authority granted in the power of attorney or financial
 312 power of attorney presented.

313 (b) A person is not required to accept a verified power of attorney or financial power of
 314 attorney if:

315 (1) The person is not otherwise required to engage in a transaction with the principal in
 316 the same circumstances;

317 (2) The person has actual knowledge of the termination of the agent's authority or the
 318 power of attorney or financial power of attorney before exercise of the power;

319 (3) A request for a certification, translation, or opinion of counsel pursuant to Code
 320 Section 10-6-90 is refused;

321 (4) The person in good faith believes that the power of attorney or financial power of
 322 attorney is not valid or that the agent does not have the authority to perform the act
 323 requested, whether or not a certification, translation, or opinion of counsel under Code
 324 Section 10-6-90 has been requested or provided; or

325 (5) The person makes, or has actual knowledge that another person has made, a report
 326 to a government agency stating a good faith belief that the principal may be subject to
 327 physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
 328 person acting for or with the agent.

329 (c) A person that refuses to accept an acknowledged power of attorney or financial power
 330 of attorney in violation of this Code section shall be subject to:

331 (1) A court order mandating acceptance of the power of attorney or financial power of
 332 attorney; and

333 (2) Liability for reasonable attorney's fees and costs incurred in any action or proceeding
 334 that confirms the validity of the power of attorney or financial power of attorney or
 335 mandates acceptance of the power of attorney or financial power of attorney."

336 **SECTION 12.**

337 Said chapter is further amended by revising Code Section 10-6-140, relating to the statutory
 338 form not exclusive method of creating financial power of attorney, as follows:

339 "10-6-140.

340 (a) The Georgia Statutory Form for Financial Power of Attorney set out in Code Section
 341 10-6-142 may be used to create a financial power of attorney; but is not the exclusive
 342 method for creating such an agency; provided, however, that on and after July 1, 2017, a
 343 financial power of attorney shall comply with the requirements of Code Section
 344 10-6-140.2.

345 (b) A financial power of attorney executed other than in this state is valid in this state if:

- 346 (1) When the financial power of attorney was executed, the execution complied with the
 347 law in the jurisdiction where it was executed;
 348 (2) The financial power of attorney indicates that it is to be governed by Georgia law and
 349 is in compliance with the requirements of this chapter; or
 350 (3) When the financial power of attorney was executed, the execution complied with the
 351 requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b."

352 SECTION 13.

353 Said chapter is further amended by adding new Code sections to read as follows:

354 "10-6-140.1.

355 (a) A financial power of attorney authorized by this article shall not authorize any power
 356 not expressly provided for in this chapter; provided, however, that a financial power of
 357 attorney shall not authorize the agent to exercise:

358 (1) A power to the extent it is coupled with an interest in the subject of the power,
 359 including a power given to or for the benefit of a creditor in connection with a credit
 360 transaction;

361 (2) A power to make health care decisions;

362 (3) A proxy or other delegation to exercise voting rights or management rights with
 363 respect to an entity; and

364 (4) A power created on a form prescribed by a government or governmental subdivision,
 365 agency, or instrumentality for a governmental purpose.

366 (b) An agent under a financial power of attorney may do the following on behalf of the
 367 principal or with the principal's property only if the financial power of attorney expressly
 368 grants the agent the authority and exercise of authority is not otherwise prohibited by
 369 another agreement or instrument to which the authority or property is subject:

370 (1) Create, amend, revoke, or terminate an inter vivos trust;

371 (2) Make a gift;

372 (3) Create or change rights of survivorship;

373 (4) Create or change a beneficiary designation;

374 (5) Delegate authority granted under the financial power of attorney;

375 (6) Waive the principal's right to be a beneficiary or joint and survivor annuity, including
 376 a survivor benefit under a retirement plan;

377 (7) Exercise fiduciary powers that the principal has authority to delegate; and

378 (8) Disclaim property, including a power of appointment.

379 (c) Notwithstanding a grant of authority to do an act described in subsection (b) of this
 380 Code section, unless the financial power of attorney otherwise provides, an agent that is not
 381 a blood relative, spouse, or in-law of the principal may not exercise authority under a

382 financial power of attorney to create in the agent, or in the individual to whom the agent
383 owes a legal obligation of support, an interest in the principal's property, whether by gift,
384 right of survivorship, beneficiary designation, disclaimer, or otherwise.

385 (d) Subject to the provisions of this Code section, a financial power of attorney that grants
386 to an agent the authority to do all acts that a principal could do shall be deemed a power
387 of attorney, and if the subjects over which authority is granted in a financial power of
388 attorney are similar or overlap, the broadest authority controls.

389 (e) Authority granted in a financial power of attorney is exercisable with respect to
390 property that the principal has when the financial power of attorney is executed or acquires
391 later, whether or not the property is located in this state and whether or not the authority
392 is exercised or the financial power of attorney is executed in this state.

393 10-6-140.2.

394 A financial power of attorney shall be in writing; signed by the principal or in the
395 principal's conscious presence by another individual directed by the principal to sign the
396 principal's name on the financial power of attorney; and signed by two adult witnesses, one
397 of whom cannot be the principal's spouse or blood relative. A signature on a financial
398 power of attorney is presumed to be genuine if the principal acknowledges the signature
399 before a notary public or other individual authorized by law to take acknowledgments."

400

SECTION 14.

401 All laws and parts of laws in conflict with this Act are repealed.