

HOUSE No. 1598

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine Lawrence Gentile

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Uniform Power of Attorney Act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/22/2021</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/22/2021</i>

HOUSE No. 1598

By Mr. Gentile of Sudbury, a petition (accompanied by bill, House, No. 1598) of Carmine Lawrence Gentile and David Paul Linsky for legislation to establish the Uniform Power of Attorney act. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3658 OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to the Uniform Power of Attorney Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 201F the
2 following chapter:-

3 CHAPTER 201G

4 UNIFORM POWER OF ATTORNEY ACT

5 Section 1. For the purposes of this chapter the following terms shall, unless the context
6 clearly appears otherwise, have the following meanings:-

7 “Agent”, a person granted authority to act for a principal under a power of
8 attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an
9 original agent, coagent, successor agent, and a person to which an agent’s authority is delegated.

“Benefits from governmental programs or civil or military service”, any benefit, program or assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.

“Durable,” with respect to a power of attorney, means not terminated by the principal’s incapacity.

“Electronic”, relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“Good faith”, honesty in fact.

“Incapacity”, inability of an individual to manage property or business affairs because the individual:

(i) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(ii) is:

(A) missing;

(B) detained, including incarcerated in a penal system; or

(C) outside the United States and unable to return.

“Person”, an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

“Power of attorney”, a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

“Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

“Principal”, an individual who grants authority to an agent in a power of attorney.

“Property”, anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

“Record”, information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Retirement plan”, a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) an individual retirement account under Internal Revenue Code Section 408, 26 U.S.C. Section 408;

(2) a Roth individual retirement account under Internal Revenue Code
Section 408A, 26 U.S.C. Section 408A;

(3) a deemed individual retirement account under Internal Revenue Code
Section 408(q), 26 U.S.C. Section 408(q);

(4) an annuity or mutual fund custodial account under Internal Revenue
Code Section 403(b), 26 U.S.C. Section 403(b);

(5) a pension, profit-sharing, stock bonus, or other retirement plan
qualified under Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a);

(6) a plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section
457(b); and

(7) a nonqualified deferred compensation plan under Internal Revenue
Code Section 409A, 26 U.S.C. Section 409A.

“Sign”, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound,
symbol, or process.

“State”, a state of the United States, the District of Columbia, Puerto Rico, the
United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
the United States.

“Stocks and bonds”, stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Section 2. This chapter applies to all powers of attorney except:

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

(ii) a power to make health-care decisions;

(iii) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(iv) a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

Section 3. A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Section 4. A power of attorney shall be signed by the principal or in the principal’s conscious presence by another individual directed by the principal to sign the principal’s name on the power of attorney. A signature on a power of attorney is presumed genuine if the principal

acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Section 5. (a) A power of attorney executed in the commonwealth on or after June 30, 2022 is valid if its execution complies with section 4.

(b) A power of attorney executed in the commonwealth before June 30, 2022 is valid if its execution complied with the law of the commonwealth as it existed at the time of execution.

(c) A power of attorney executed other than in the commonwealth is valid in the commonwealth if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 6; or

(2) the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b.

(d) Except as otherwise provided by a general or special law other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 6. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Section 7. (a) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(b) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

Section 8. (a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

129 (1) a physician or licensed psychologist that the principal is incapacitated
130 within the meaning of clause (i) of the definition of “incapacity” in section 1; or

131 (2) an attorney at law, a judge, or an appropriate governmental official
132 that the principal is incapacitated within the meaning of clause (ii) of said definition of
133 “incapacity” in said section 1.

134 (d) A person authorized by the principal in the power of attorney to determine
135 that the principal is incapacitated may act as the principal’s personal representative pursuant to
136 the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the
137 Social Security Act, 42 U.S.C. Section 1320d and applicable regulations, to obtain access to the
138 principal’s health-care information and communicate with the principal’s health-care provider.

139

140 Section 9. (a) A power of attorney terminates when:

141 (1) the principal dies;

142 (2) the principal becomes incapacitated, if the power of attorney is not
143 durable;

144 (3) the principal revokes the power of attorney;

145 (4) the power of attorney provides that it terminates;

146 (5) the purpose of the power of attorney is accomplished; or

147 (6) the principal revokes the agent's authority or the agent dies, becomes
148 incapacitated, or resigns, and the power of attorney does not provide for another agent to act
149 under the power of attorney.

150 (b) An agent's authority terminates when:

151 (1) the principal revokes the authority;

152 (2) the agent dies, becomes incapacitated, or resigns;

153 (3) an action is filed for the dissolution or annulment of the agent's
154 marriage to the principal or their legal separation, unless the power of attorney otherwise
155 provides; or

156 (4) the power of attorney terminates.

157 (c) Unless the power of attorney otherwise provides, an agent's authority is
158 exercisable until the authority terminates under subsection (b), notwithstanding a lapse of time
159 since the execution of the power of attorney.

160 (d) Termination of an agent's authority or of a power of attorney is not effective
161 as to the agent or another person that, without actual knowledge of the termination, acts in good
162 faith under the power of attorney. An act so performed, unless otherwise invalid or
163 unenforceable, binds the principal and the principal's successors in interest.

164 (e) Incapacity of the principal of a power of attorney that is not durable does not
165 revoke or terminate the power of attorney as to an agent or other person that, without actual
166 knowledge of the incapacity, acts in good faith under the power of attorney. An act so

performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

Section 10. (a) A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(b) A principal may designate 1 or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate 1 or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

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

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

(c) Except as otherwise provided in the power of attorney and subsection (d), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated,

188 take any action reasonably appropriate in the circumstances to safeguard the principal's best
189 interest. An agent that fails to notify the principal or take action as required by this subsection is
190 liable for the reasonably foreseeable damages that could have been avoided if the agent had
191 notified the principal or taken such action.

192
193 Section 11. Unless the power of attorney otherwise provides, an agent is entitled to
194 reimbursement of expenses reasonably incurred on behalf of the principal and to compensation
195 that is reasonable under the circumstances.

196
197 Section 12. Except as otherwise provided in the power of attorney, a person accepts
198 appointment as an agent under a power of attorney by exercising authority or performing duties
199 as an agent or by any other assertion or conduct indicating acceptance.

200
201 Section 13. (a) Notwithstanding provisions in the power of attorney, an agent that has
202 accepted appointment shall:

203 (1) act in accordance with the principal's reasonable expectations to the
204 extent actually known by the agent and, otherwise, in the principal's best interest;

205 (2) act in good faith; and

206 (3) act only within the scope of authority granted in the power of attorney.

207 (b) Except as otherwise provided in the power of attorney, an agent that has
208 accepted appointment shall:

209 (1) act loyally for the principal's benefit;

210 (2) act so as not to create a conflict of interest that impairs the agent's
211 ability to act impartially in the principal's best interest;

212 (3) act with the care, competence, and diligence ordinarily exercised by
213 agents in similar circumstances;

214 (4) keep a record of all receipts, disbursements, and transactions made on
215 behalf of the principal;

216 (5) cooperate with a person that has authority to make health-care
217 decisions for the principal to carry out the principal's reasonable expectations to the extent
218 actually known by the agent and, otherwise, act in the principal's best interest; and

219 (6) attempt to preserve the principal's estate plan, to the extent actually
220 known by the agent, if preserving the plan is consistent with the principal's best interest based on
221 all relevant factors, including:

222 (A) the value and nature of the principal's property;

223 (B) the principal's foreseeable obligations and need for
224 maintenance;

225 (C) minimization of taxes, including income, estate, inheritance,
226 generation-skipping transfer, and gift taxes; and

(D) eligibility for a benefit, a program, or assistance under a statute or regulation.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

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

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

(g) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare

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

Section 14. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

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

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

Section 15. (a) The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

(1) the principal or the agent;

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

(3) a person authorized to make health-care decisions for the principal;

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

(5) an individual who would qualify as a presumptive heir of the principal;

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

(7) a governmental agency having regulatory authority to protect the welfare of the principal;

(8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(9) a person asked to accept the power of attorney.

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

Section 16. An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

(i) restore the value of the principal's property to what it would have been had the violation not occurred; and

(ii) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

288

289 Section 17. Unless the power of attorney provides a different method for an agent's
290 resignation, an agent may resign by giving notice to the principal and, if the principal is
291 incapacitated:

292 (i) to the conservator or guardian, if one has been appointed for the principal, and
293 a coagent or successor agent; or

294 (ii) if there is no person described in clause (1), to:

295 (A) the principal's caregiver;

296 (B) another person reasonably believed by the agent to have sufficient
297 interest in the principal's welfare; or

298 (C) a governmental agency having authority to protect the welfare of the
299 principal.

300

301 Section 18. (a) For purposes of this section and section 19, "acknowledged" means
302 purportedly verified before a notary public or other individual authorized to take
303 acknowledgements.

304 (b) A person that in good faith accepts an acknowledged power of attorney
305 without actual knowledge that the signature is not genuine may rely upon the presumption under
306 section 4 that the signature is genuine.

307 (c) A person that in good faith accepts an acknowledged power of attorney
308 without actual knowledge that the power of attorney is void, invalid, or terminated, that the
309 purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or
310 improperly exercising the agent's authority may rely upon the power of attorney as if the power
311 of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and
312 still in effect, and the agent had not exceeded and had properly exercised the authority.

313 (d) A person that is asked to accept an acknowledged power of attorney may
314 request, and rely upon, without further investigation:

315 (1) an agent's certification under penalty of perjury of any factual matter
316 concerning the principal, agent, or power of attorney;

317 (2) an English translation of the power of attorney if the power of attorney
318 contains, in whole or in part, language other than English; and

319 (3) an opinion of counsel as to any matter of law concerning the power of
320 attorney if the person making the request provides in a writing or other record the reason for the
321 request.

322 (e) An English translation or an opinion of counsel requested under this section
323 must be provided at the principal's expense unless the request is made more than seven business
324 days after the power of attorney is presented for acceptance.

325 (f) For purposes of this section and section 19, a person that conducts activities
326 through employees is without actual knowledge of a fact relating to a power of attorney, a

principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

Section 19. (a) Except as otherwise provided in subsection (b):

(1) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under section 18 no later than 7 business days after presentation of the power of attorney for acceptance;

(2) if a person requests a certification, a translation, or an opinion of counsel under section 18, the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel; and

(3) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(b) A person is not required to accept an acknowledged power of attorney if:

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

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(3) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(4) a request for a certification, a translation, or an opinion of counsel under section 18 is refused;

(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under section 18 has been requested or provided; or

(6) the person makes, or has actual knowledge that another person has made, a report to the department of mental health or the executive office of elder affairs stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(1) a court order mandating acceptance of the power of attorney; and

(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Section 20. Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

Section 21. This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter.

Section 22. The remedies under this chapter are not exclusive and do not abrogate any right or remedy under the laws of the commonwealth other than this chapter.

Section 23. (a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (1) create, amend, revoke, or terminate an inter vivos trust;
- (2) make a gift;
- (3) create or change rights of survivorship;
- (4) create or change a beneficiary designation;
- (5) delegate authority granted under the power of attorney;
- (6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (7) exercise fiduciary powers that the principal has authority to delegate;

383 (8) exercise authority over the content of electronic communications, as
384 defined in 18 U.S.C. Section 2510(12) sent or received by the principal; or

385 (9) disclaim property, including a power of appointment.

386 (b) Notwithstanding a grant of authority to do an act described in subsection (a),
387 unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or
388 descendant of the principal, may not exercise authority under a power of attorney to create in the
389 agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the
390 principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer,
391 or otherwise.

392 (c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an
393 agent authority to do all acts that a principal could do, the agent has the general authority
394 described in Sections 26 through 38.

395 (d) Unless the power of attorney otherwise provides, a grant of authority to make
396 a gift is subject to Section 39.

397 (e) Subject to subsections (a), (b), and (d), if the subjects over which authority is
398 granted in a power of attorney are similar or overlap, the broadest authority controls.

399 (f) Authority granted in a power of attorney is exercisable with respect to property
400 that the principal has when the power of attorney is executed or acquires later, whether or not the
401 property is located in this state and whether or not the authority is exercised or the power of
402 attorney is executed in this state.

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

Section 24. (a) An agent has authority described in this chapter if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Sections 26 to 39, inclusive, or cites the section in which the authority is described.

(b) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in Sections 26 to 39, inclusive, or a citation to a section of Sections 26 to 39, inclusive, incorporates the entire section as if it were set out in full in the power of attorney.

(c) A principal may modify authority incorporated by reference.

Section 25. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in Sections 26 to 39, inclusive, or that grants to an agent authority to do all acts that a principal could do pursuant to subsection (c) of Section 15, a principal authorizes the agent, with respect to that subject, to:

(i) demand, receive and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

423 (ii) contract in any manner with any person, on terms agreeable to the agent, to
424 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
425 release or modify the contract or another contract made by or on behalf of the principal;

426 (iii) execute, acknowledge, seal, deliver, file or record any instrument or
427 communication the agent considers desirable to accomplish a purpose of a transaction, including
428 creating at any time a schedule listing some or all of the principal's property and attaching it to
429 the power of attorney;

430 (iv) initiate, participate in, submit to alternative dispute resolution, settle, oppose
431 or propose or accept a compromise with respect to a claim existing in favor of or against the
432 principal or intervene in litigation relating to the claim;

433 (v) seek on the principal's behalf the assistance of a court or other governmental
434 agency to carry out an act authorized in the power of attorney;

435 (vi) engage, compensate, and discharge an attorney, accountant, discretionary
436 investment manager, expert witness or other advisor;

437 (vii) prepare, execute, and file a record, report or other document to safeguard or
438 promote the principal's interest under a statute or regulation;

439 (viii) communicate with any representative or employee of a government or
440 governmental subdivision, agency or instrumentality, on behalf of the principal;

441 (ix) access communications intended for, and communicate on behalf of the
442 principal, whether by mail, electronic transmission, telephone or other means; and

443 (x) do any lawful act with respect to the subject and all property related to the
444 subject.

445

446 Section 26. Unless the power of attorney otherwise provides, language in a power of
447 attorney granting general authority with respect to real property authorizes the agent to:

448 (i) demand, buy, lease, receive, accept as a gift or as security for an extension of
449 credit or otherwise acquire or reject an interest in real property or a right incident to real
450 property;

451 (ii) sell; exchange; convey with or without covenants, representations or
452 warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to
453 partitioning; subject to an easement or covenant; subdivide; apply for zoning or other
454 governmental permits; plat or consent to platting; develop; grant an option concerning; lease;
455 sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or
456 dispose of an interest in real property or a right incident to real property;

457 (iii) pledge or mortgage an interest in real property or right incident to real
458 property as security to borrow money or pay, renew or extend the time of payment of a debt of
459 the principal or a debt guaranteed by the principal;

460 (iv) release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed
461 of trust, conditional sale contract, encumbrance, lien or other claim to real property which exists
462 or is asserted;

463 (v) manage or conserve an interest in real property or a right incident to real
464 property owned or claimed to be owned by the principal, including:

465 (A) insuring against liability or casualty or other loss;

466 (B) obtaining or regaining possession of or protecting the interest or right
467 by litigation or otherwise;

468 (C) paying, assessing, compromising, or contesting taxes or assessments
469 or applying for and receiving refunds in connection with them; and

470 (D) purchasing supplies, hiring assistance or labor, and making repairs or
471 alterations to the real property;

472 (vi) use, develop, alter, replace, remove, erect or install structures or other
473 improvements upon real property in or incident to which the principal has, or claims to have, an
474 interest or right;

475 (vii) participate in a reorganization with respect to real property or an entity that
476 owns an interest in or right incident to real property and receive, and hold, and act with respect to
477 stocks and bonds or other property received in a plan of reorganization, including:

478 (A) selling or otherwise disposing of them;

479 (B) exercising or selling an option, right of conversion or similar right
480 with respect to them; and

481 (C) exercising any voting rights in person or by proxy;

482 (viii) change the form of title of an interest in or right incident to real property;
483 and

484 (ix) dedicate to public use, with or without consideration, easements or other real
485 property in which the principal has, or claims to have, an interest.

486

487 Section 27. Unless the power of attorney otherwise provides, language in a power of
488 attorney granting general authority with respect to tangible personal property authorizes the
489 agent to:

490 (i) demand, buy, receive, accept as a gift or as security for an extension of credit
491 or otherwise acquire or reject ownership or possession of tangible personal property or an
492 interest in tangible personal property;

493 (ii) sell; exchange; convey with or without covenants, representations or
494 warranties; quitclaim; release; surrender; create a security interest in; grant options concerning;
495 lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible
496 personal property;

497 (iii) grant a security interest in tangible personal property or an interest in
498 tangible personal property as security to borrow money or pay, renew or extend the time of
499 payment of a debt of the principal or a debt guaranteed by the principal;

500 (iv) release, assign, satisfy or enforce by litigation or otherwise, a security
501 interest, lien or other claim on behalf of the principal, with respect to tangible personal property
502 or an interest in tangible personal property;

503 (v) manage or conserve tangible personal property or an interest in tangible
504 personal property on behalf of the principal, including:

505 (A) insuring against liability or casualty or other loss;

506 (B) obtaining or regaining possession of or protecting the property or
507 interest, by litigation or otherwise;

508 (C) paying, assessing, compromising or contesting taxes or assessments
509 or applying for and receiving refunds in connection with taxes or assessments;

510 (D) moving the property from place to place;

511 (E) storing the property for hire or on a gratuitous bailment; and

512 (F) using and making repairs, alterations or improvements to the property;

513 and

514 (vi) change the form of title of an interest in tangible personal property.

515

516 Section 28. Unless the power of attorney otherwise provides, language in a power of
517 attorney granting general authority with respect to stocks and bonds authorizes the agent to:

518 (i) buy, sell and exchange stocks and bonds;

519 (ii) establish, continue, modify or terminate an account with respect to stocks and
520 bonds;

521 (iii) pledge stocks and bonds as security to borrow, pay, renew or extend the time
522 of payment of a debt of the principal;

523 (iv) receive certificates and other evidences of ownership with respect to stocks
524 and bonds; and

525 (v) exercise voting rights with respect to stocks and bonds in person or by proxy,
526 enter into voting trusts and consent to limitations on the right to vote.

527

528 Section 29. Unless the power of attorney otherwise provides, language in a power of
529 attorney granting general authority with respect to commodities and options authorizes the agent
530 to:

531 (i) buy, sell, exchange, assign, settle and exercise commodity futures contracts
532 and call or put options on stocks or stock indexes traded on a regulated option exchange; and

533 (ii) establish, continue, modify and terminate option accounts.

534

535 Section 30. Unless the power of attorney otherwise provides, language in a power of
536 attorney granting general authority with respect to banks and other financial institutions
537 authorizes the agent to:

538 (i) continue, modify and terminate an account or other banking arrangement
539 made by or on behalf of the principal;

540 (ii) establish, modify and terminate an account or other banking arrangement
541 with a bank, trust company, savings and loan association, credit union, thrift company, brokerage
542 firm or other financial institution selected by the agent;

543 (iii) contract for services available from a financial institution, including renting a
544 safe deposit box or space in a vault;

545 (iv) withdraw, by check, order, electronic funds transfer or otherwise, money or
546 property of the principal deposited with or left in the custody of a financial institution;

547 (v) receive statements of account, vouchers, notices and similar documents from
548 a financial institution and act with respect to them;

549 (vi) enter a safe deposit box or vault and withdraw or add to the contents;

550 (vii) borrow money and pledge as security personal property of the principal
551 necessary to borrow money or pay, renew or extend the time of payment of a debt of the
552 principal or a debt guaranteed by the principal;

553 (viii) make, assign, draw, endorse, discount, guarantee and negotiate promissory
554 notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to
555 the principal or the principal's order, transfer money, receive the cash or other proceeds of those
556 transactions and accept a draft drawn by a person upon the principal and pay it when due;

557 (ix) receive for the principal and act upon a sight draft, warehouse receipt or
558 other document of title whether tangible or electronic, or other negotiable or nonnegotiable
559 instrument;

560 (x) apply for, receive, and use letters of credit, credit and debit cards, electronic
561 transaction authorizations and traveler's checks from a financial institution and give an
562 indemnity or other agreement in connection with letters of credit; and

563 (xi) consent to an extension of the time of payment with respect to commercial
564 paper or a financial transaction with a financial institution.

565

566 Section 31. Subject to the terms of a document or an agreement governing an entity or an
567 entity ownership interest, and unless the power of attorney otherwise provides, language in a
568 power of attorney granting general authority with respect to operation of an entity or business
569 authorizes the agent to:

570 (i) operate, buy, sell, enlarge, reduce or terminate an ownership interest;

571 (ii) perform a duty or discharge a liability and exercise in person or by proxy a
572 right, power, privilege or option that the principal has, may have, or claims to have;

573 (iii) enforce the terms of an ownership agreement;

574 (iv) initiate, participate in, submit to alternative dispute resolution, settle, oppose
575 or propose or accept a compromise with respect to litigation to which the principal is a party
576 because of an ownership interest;

577 (v) exercise in person or by proxy, or enforce by litigation or otherwise, a right,
578 power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

579 (vi) initiate, participate in, submit to alternative dispute resolution, settle, oppose,
580 or propose or accept a compromise with respect to litigation to which the principal is a party
581 concerning stocks and bonds;

582 (vii) with respect to an entity or business owned solely by the principal:

583 (A) continue, modify, renegotiate, extend and terminate a contract made
584 by or on behalf of the principal with respect to the entity or business before execution of the
585 power of attorney;

586 (B) determine:

587 (1) the location of its operation;

588 (2) the nature and extent of its business;

589 (3) the methods of manufacturing, selling, merchandising,
590 financing, accounting and advertising employed in its operation;

591 (4) the amount and types of insurance carried; and

592 (5) the mode of engaging, compensating, and dealing with its
593 employees and accountants, attorneys or other advisors;

594 (C) change the name or form of organization under which the entity or
595 business is operated and enter into an ownership agreement with other persons to take over all or
596 part of the operation of the entity or business; and

597 (D) demand and receive money due or claimed by the principal or on the
598 principal's behalf in the operation of the entity or business and control and disburse the money in
599 the operation of the entity or business;

600 (viii) put additional capital into an entity or business in which the principal has an
601 interest;

602 (ix) join in a plan of reorganization, consolidation, conversion, domestication, or
603 merger of the entity or business;

604 (x) sell or liquidate all or part of an entity or business;

605 (xi) establish the value of an entity or business under a buy-out agreement to
606 which the principal is a party;

607 (xii) prepare, sign, file and deliver reports, compilations of information, returns,
608 or other papers with respect to an entity or business and make related payments; and

609 (xiii) pay, compromise, or contest taxes, assessments, fines or penalties and
610 perform any other act to protect the principal from illegal or unnecessary taxation, assessments,
611 fines or penalties, with respect to an entity or business, including attempts to recover, in any
612 manner permitted by law, money paid before or after the execution of the power of attorney.

613

614 Section 32. Unless the power of attorney otherwise provides, language in a power of
615 attorney granting general authority with respect to insurance and annuities authorizes the agent
616 to:

617 (i) continue, pay the premium or make a contribution on, modify, exchange,
618 rescind, release, or terminate a contract procured by or on behalf of the principal which insures
619 or provides an annuity to either the principal or another person, whether or not the principal is a
620 beneficiary under the contract;

621 (ii) procure new, different and additional contracts of insurance and annuities for
622 the principal and the principal's spouse, children and other dependents, and select the amount,
623 type of insurance or annuity and mode of payment;

624 (iii) pay the premium or make a contribution on, modify, exchange, rescind,
625 release or terminate a contract of insurance or annuity procured by the agent;

626 (iv) apply for and receive a loan secured by a contract of insurance or annuity;

627 (v) surrender and receive the cash surrender value on a contract of insurance or
628 annuity;

629 (vi) exercise an election;

630 (vii) exercise investment powers available under a contract of insurance or
631 annuity;

632 (viii) change the manner of paying premiums on a contract of insurance or
633 annuity;

634 (ix) change or convert the type of insurance or annuity with respect to which the
635 principal has or claims to have authority described in this section;

636 (x) apply for and procure a benefit or assistance under a statute or regulation to
637 guarantee or pay premiums of a contract of insurance on the life of the principal;

638 (xi) collect, sell, assign, hypothecate, borrow against or pledge the interest of the
639 principal in a contract of insurance or annuity;

640 (xii) select the form and timing of the payment of proceeds from a contract of
641 insurance or annuity; and

642 (xiii) pay, from proceeds or otherwise, compromise or contest and apply for
643 refunds in connection with, a tax or assessment levied by a taxing authority with respect to a
644 contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or
645 assessment.

646 Section 33. (a) In this section, “estate, trust, or other beneficial interest” means a trust,
647 probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the
648 principal is, may become or claims to be, entitled to a share or payment.

649 (b) Unless the power of attorney otherwise provides, language in a power of attorney
650 granting general authority with respect to estates, trusts, and other beneficial interests authorizes
651 the agent to:

652 (1) accept, receive, receipt for, sell, assign, pledge or exchange a share in or
653 payment from an estate, trust, or other beneficial interest;

654 (2) demand or obtain money or another thing of value to which the principal is,
655 may become or claims to be, entitled by reason of an estate, trust or other beneficial interest, by
656 litigation or otherwise;

657 (3) exercise for the benefit of the principal a presently exercisable general power
658 of appointment held by the principal;

659 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose,
660 or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or
661 effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest
662 of the principal;

663 (5) initiate, participate in, submit to alternative dispute resolution, settle, oppose,
664 or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a
665 fiduciary;

666 (6) conserve, invest, disburse or use anything received for an authorized purpose;

667 (7) transfer an interest of the principal in real property, stocks and bonds,
668 accounts with financial institutions or securities intermediaries, insurance, annuities and other
669 property to the trustee of a revocable trust created by the principal as settlor; and

670 (8) reject, renounce, disclaim, release, or consent to a reduction in or
671 modification of a share in or payment from an estate, trust or other beneficial interest.

672

673 Section 34. Unless the power of attorney otherwise provides, language in a power of
674 attorney granting general authority with respect to claims and litigation authorizes the agent to:

675 (i) assert and maintain before a court or administrative agency a claim, claim for
676 relief, cause of action, counterclaim, offset, recoupment or defense, including an action to

677 recover property or other thing of value, recover damages sustained by the principal, eliminate or
678 modify tax liability, or seek an injunction, specific performance or other relief;

679 (ii) bring an action to determine adverse claims or intervene or otherwise
680 participate in litigation;

681 (iii) seek an attachment, garnishment, order of arrest or other preliminary,
682 provisional or intermediate relief and use an available procedure to effect or satisfy a judgment,
683 order or decree;

684 (iv) make or accept a tender, offer of judgment or admission of facts, submit a
685 controversy on an agreed statement of facts, consent to examination, and bind the principal in
686 litigation;

687 (v) submit to alternative dispute resolution, settle and propose or accept a
688 compromise;

689 (vi) waive the issuance and service of process upon the principal, accept service
690 of process, appear for the principal, designate persons upon which process directed to the
691 principal may be served, execute and file or deliver stipulations on the principal's behalf, verify
692 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay
693 for the preparation and printing of records and briefs, receive, execute and file or deliver a
694 consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or
695 other instrument in connection with the prosecution, settlement or defense of a claim or
696 litigation;

697 (vii) act for the principal with respect to bankruptcy or insolvency, whether
698 voluntary or involuntary, concerning the principal or some other person, or with respect to a
699 reorganization, receivership or application for the appointment of a receiver or trustee which
700 affects an interest of the principal in property or other thing of value;

701 (viii) pay a judgment, award or order against the principal or a settlement made in
702 connection with a claim or litigation; and

703 (ix) receive money or other thing of value paid in settlement of or as proceeds of
704 a claim or litigation.

705

706 Section 35. (a) Unless the power of attorney otherwise provides, language in a power of
707 attorney granting general authority with respect to personal and family maintenance authorizes
708 the agent to:

709 (1) perform the acts necessary to maintain the customary standard of
710 living of the principal, the principal's spouse and the following individuals, whether living when
711 the power of attorney is executed or later born:

712 (A) the principal's children;

713 (B) other individuals legally entitled to be supported by the
714 principal; and

715 (C) the individuals whom the principal has customarily supported
716 or indicated the intent to support;

717 (2) make periodic payments of child support and other family maintenance
718 required by a court or governmental agency or an agreement to which the principal is a party;

719 (3) provide living quarters for the individuals described in clause (1) by:

720 (A) purchase, lease or other contract; or

721 (B) paying the operating costs, including interest, amortization
722 payments, repairs, improvements and taxes, for premises owned by the principal or occupied by
723 those individuals;

724 (4) provide normal domestic help, usual vacations and travel expenses,
725 and funds for shelter, clothing, food, appropriate education, including postsecondary and
726 vocational education and other current living costs for the individuals described in clause (1);

727 (5) pay expenses for necessary health care and custodial care on behalf of
728 the individuals described in clause (1);

729 (6) act as the principal's personal representative pursuant to the Health
730 Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security
731 Act, 42 U.S.C. Section 1320d and applicable regulations, in making decisions related to the past,
732 present, or future payment for the provision of health care consented to by the principal or
733 anyone authorized under the law of this state to consent to health care on behalf of the principal;

734 (7) continue any provision made by the principal for automobiles or other
735 means of transportation, including registering, licensing, insuring and replacing them, for the
736 individuals described in clause (1);

737 (8) maintain credit and debit accounts for the convenience of the
738 individuals described in clause (1) and open new accounts; and

739 (9) continue payments incidental to the membership or affiliation of the
740 principal in a religious institution, club, society, order or other organization or to continue
741 contributions to those organizations.

742 (b) Authority with respect to personal and family maintenance is neither
743 dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts
744 under this chapter.

745

746 Section 36. Unless the power of attorney otherwise provides, language in a power of
747 attorney granting general authority with respect to benefits from governmental programs or civil
748 or military service authorizes the agent to:

749 (i) execute vouchers in the name of the principal for allowances and
750 reimbursements payable by the United States or a foreign government or by a state or
751 subdivision of a state to the principal, including allowances and reimbursements for
752 transportation of the individuals described in clause (1) of subsection (a) of section 35, and for
753 shipment of their household effects;

754 (ii) take possession and order the removal and shipment of property of the
755 principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either
756 governmental or private and execute and deliver a release, voucher, receipt, bill of lading,
757 shipping ticket, certificate or other instrument for that purpose;

758 (iii) enroll in, apply for, select, reject, change, amend or discontinue, on
759 the principal's behalf, a benefit or program;

760 (iv) prepare, file, and maintain a claim of the principal for a benefit or
761 assistance, financial or otherwise, to which the principal may be entitled under a statute or
762 regulation;

763 (v) initiate, participate in, submit to alternative dispute resolution, settle,
764 oppose or propose or accept a compromise with respect to litigation concerning any benefit or
765 assistance the principal may be entitled to receive under a statute or regulation; and

766 (vi) receive the financial proceeds of a claim described in clause (iv) and
767 conserve, invest, disburse or use for a lawful purpose anything so received.

768

769 Section 37. Unless the power of attorney otherwise provides, language in a power of
770 attorney granting general authority with respect to retirement plans authorizes the agent to:

771 (i) select the form and timing of payments under a retirement plan and
772 withdraw benefits from a plan;

773 (ii) make a rollover, including a direct trustee-to-trustee rollover, of
774 benefits from one retirement plan to another;

775 (iii) establish a retirement plan in the principal's name;

776 (iv) make contributions to a retirement plan;

777 (v) exercise investment powers available under a retirement plan; and

(vi) borrow from, sell assets to, or purchase assets from a retirement plan.

Section 38. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(i) prepare, sign, and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code Section 2032A, 26 U.S.C. Section 2032A, closing agreements and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(ii) pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(iii) exercise any election available to the principal under federal, state, local or foreign tax law; and

(iv) act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

Section 39. (a) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act (1983/1986) and a tuition savings account

798 or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C. Section
799 529.

800 (b) Unless the power of attorney otherwise provides, language in a power of
801 attorney granting general authority with respect to gifts authorizes the agent only to:

802 (1) make outright to, or for the benefit of, a person, a gift of any of the
803 principal's property, including by the exercise of a presently exercisable general power of
804 appointment held by the principal, in an amount per donee not to exceed the annual dollar limits
805 of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. Section
806 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the
807 principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section
808 2513, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax
809 exclusion limit; and

810 (2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C.
811 Section 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not
812 to exceed the aggregate annual gift tax exclusions for both spouses.

813 (c) An agent may make a gift of the principal's property only as the agent
814 determines is consistent with the principal's objectives if actually known by the agent and, if
815 unknown, as the agent determines is consistent with the principal's best interest based on all
816 relevant factors, including:

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

818 (2) the principal's foreseeable obligations and need for maintenance;

- 819 (3) minimization of taxes, including income, estate, inheritance,
820 generation-skipping transfer and gift taxes;
- 821 (4) eligibility for a benefit, a program or assistance under a statute or
822 regulation; and
- 823 (5) the principal's personal history of making or joining in making gifts.

824 Section 32. This chapter modifies, limits, and supersedes the federal Electronic
825 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
826 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
827 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
828 Section 7003(b).

829

830 SECTION 2. Except as otherwise provided in this act, on June 30, 2022:

831 (1) this act applies to a power of attorney created before, on, or after June 30,
832 2022;

833 (2) this act applies to a judicial proceeding concerning a power of attorney
834 commenced on or after June 30, 2022;

835 (3) this act applies to a judicial proceeding concerning a power of attorney
836 commenced before June 30, 2022 unless the court finds that application of a provision of this act
837 would substantially interfere with the effective conduct of the judicial proceeding or prejudice
838 the rights of a party, in which case that provision does not apply and the superseded law applies;
839 and

840 (4) an act done before June 30, 2022 is not affected by this act.

841

842 SECTION 3. Sections 5-501 to 5-507, inclusive, of chapter 190B of the General Laws are
843 hereby repealed.

844

845 SECTION 4. This act takes effect June 30, 2022.