



Sen. Ira I. Silverstein

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09400SB2676sam002

LRB094 19015 AJ0 56624 a

1 AMENDMENT TO SENATE BILL 2676

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2676, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Power of Attorney Act is amended  
6 by changing Sections 2-9 and 3-4 as follows:

7 (755 ILCS 45/2-9) (from Ch. 110 1/2, par. 802-9)

8 Sec. 2-9. Preservation of estate plan and trusts. In  
9 exercising powers granted under the agency, including powers of  
10 amendment or revocation and powers to expend or withdraw  
11 property passing by trust, contract or beneficiary designation  
12 at the principal's death (such as, without limitation,  
13 specifically bequeathed property, joint accounts, life  
14 insurance, trusts and retirement plans), the agent shall take  
15 the principal's estate plan into account insofar as it is known  
16 to the agent and shall attempt to preserve the plan, but the  
17 agent shall not be liable to any plan beneficiary under this  
18 Section unless the agent acts in bad faith. An agent may not  
19 revoke or amend a trust revocable or amendable by the principal  
20 or require the trustee of any trust for the benefit of the  
21 principal to pay income or principal to the agent without  
22 specific authority and specific reference to the trust in the  
23 agency. The agent shall have access to and the right to copy  
24 (but not to hold) the principal's will, trusts and other

1 personal papers and records to the extent the agent deems  
2 relevant for purposes of this Section. This Section shall not  
3 apply to any Totten Trust, Payable on Death Account, or  
4 comparable trust account arrangement where the terms of such  
5 trust are contained entirely on the financial institution's  
6 signature card insofar as an agent acting under a power of  
7 attorney executed in accordance with this Act shall be  
8 permitted to withdraw income or principal from such account if  
9 the power of attorney grants the agent authority to conduct  
10 financial institution transactions on the principal's behalf  
11 and the agent's authority to access such account is not  
12 expressly limited or withheld in the agency.

13 (Source: P.A. 85-701.)

14 (755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

15 Sec. 3-4. Explanation of powers granted in the statutory  
16 short form power of attorney for property. This Section defines  
17 each category of powers listed in the statutory short form  
18 power of attorney for property and the effect of granting  
19 powers to an agent. When the title of any of the following  
20 categories is retained (not struck out) in a statutory property  
21 power form, the effect will be to grant the agent all of the  
22 principal's rights, powers and discretions with respect to the  
23 types of property and transactions covered by the retained  
24 category, subject to any limitations on the granted powers that  
25 appear on the face of the form. The agent will have authority  
26 to exercise each granted power for and in the name of the  
27 principal with respect to all of the principal's interests in  
28 every type of property or transaction covered by the granted  
29 power at the time of exercise, whether the principal's  
30 interests are direct or indirect, whole or fractional, legal,  
31 equitable or contractual, as a joint tenant or tenant in common  
32 or held in any other form; but the agent will not have power  
33 under any of the statutory categories (a) through (o) to make

1 gifts of the principal's property, to exercise powers to  
2 appoint to others or to change any beneficiary whom the  
3 principal has designated to take the principal's interests at  
4 death under any will, trust, joint tenancy, beneficiary form or  
5 contractual arrangement. The agent will be under no duty to  
6 exercise granted powers or to assume control of or  
7 responsibility for the principal's property or affairs; but  
8 when granted powers are exercised, the agent will be required  
9 to use due care to act for the benefit of the principal in  
10 accordance with the terms of the statutory property power and  
11 will be liable for negligent exercise. The agent may act in  
12 person or through others reasonably employed by the agent for  
13 that purpose and will have authority to sign and deliver all  
14 instruments, negotiate and enter into all agreements and do all  
15 other acts reasonably necessary to implement the exercise of  
16 the powers granted to the agent.

17 (a) Real estate transactions. The agent is authorized to:  
18 buy, sell, exchange, rent and lease real estate (which term  
19 includes, without limitation, real estate subject to a land  
20 trust and all beneficial interests in and powers of direction  
21 under any land trust); collect all rent, sale proceeds and  
22 earnings from real estate; convey, assign and accept title to  
23 real estate; grant easements, create conditions and release  
24 rights of homestead with respect to real estate; create land  
25 trusts and exercise all powers under land trusts; hold,  
26 possess, maintain, repair, improve, subdivide, manage, operate  
27 and insure real estate; pay, contest, protest and compromise  
28 real estate taxes and assessments; and, in general, exercise  
29 all powers with respect to real estate which the principal  
30 could if present and under no disability.

31 (b) Financial institution transactions. The agent is  
32 authorized to: open, close, continue and control all accounts  
33 and deposits in any type of financial institution (which term  
34 includes, without limitation, banks, trust companies, savings

1 and building and loan associations, credit unions and brokerage  
2 firms); deposit in and withdraw from and write checks on any  
3 financial institution account or deposit; and, in general,  
4 exercise all powers with respect to financial institution  
5 transactions which the principal could if present and under no  
6 disability. This authorization shall also apply to any Totten  
7 Trust, Payable on Death Account, or comparable trust account  
8 arrangement where the terms of such trust are contained  
9 entirely on the financial institution's signature card,  
10 insofar as an agent shall be permitted to withdraw income or  
11 principal from such account, unless this authorization is  
12 expressly limited or withheld under paragraph 2 of the form  
13 prescribed under Section 3-3. This authorization shall not  
14 apply to accounts titled in the name of any trust subject to  
15 the provisions of the Trusts and Trustees Act, for which  
16 specific reference to the trust and a specific grant of  
17 authority to the agent to withdraw income or principal from  
18 such trust is required pursuant to Section 2-9 of the Illinois  
19 Power of Attorney Act and subsection (n) of this Section.

20 (c) Stock and bond transactions. The agent is authorized  
21 to: buy and sell all types of securities (which term includes,  
22 without limitation, stocks, bonds, mutual funds and all other  
23 types of investment securities and financial instruments);  
24 collect, hold and safekeep all dividends, interest, earnings,  
25 proceeds of sale, distributions, shares, certificates and  
26 other evidences of ownership paid or distributed with respect  
27 to securities; exercise all voting rights with respect to  
28 securities in person or by proxy, enter into voting trusts and  
29 consent to limitations on the right to vote; and, in general,  
30 exercise all powers with respect to securities which the  
31 principal could if present and under no disability.

32 (d) Tangible personal property transactions. The agent is  
33 authorized to: buy and sell, lease, exchange, collect, possess  
34 and take title to all tangible personal property; move, store,

1 ship, restore, maintain, repair, improve, manage, preserve,  
2 insure and safekeep tangible personal property; and, in  
3 general, exercise all powers with respect to tangible personal  
4 property which the principal could if present and under no  
5 disability.

6 (e) Safe deposit box transactions. The agent is authorized  
7 to: open, continue and have access to all safe deposit boxes;  
8 sign, renew, release or terminate any safe deposit contract;  
9 drill or surrender any safe deposit box; and, in general,  
10 exercise all powers with respect to safe deposit matters which  
11 the principal could if present and under no disability.

12 (f) Insurance and annuity transactions. The agent is  
13 authorized to: procure, acquire, continue, renew, terminate or  
14 otherwise deal with any type of insurance or annuity contract  
15 (which terms include, without limitation, life, accident,  
16 health, disability, automobile casualty, property or liability  
17 insurance); pay premiums or assessments on or surrender and  
18 collect all distributions, proceeds or benefits payable under  
19 any insurance or annuity contract; and, in general, exercise  
20 all powers with respect to insurance and annuity contracts  
21 which the principal could if present and under no disability.

22 (g) Retirement plan transactions. The agent is authorized  
23 to: contribute to, withdraw from and deposit funds in any type  
24 of retirement plan (which term includes, without limitation,  
25 any tax qualified or nonqualified pension, profit sharing,  
26 stock bonus, employee savings and other retirement plan,  
27 individual retirement account, deferred compensation plan and  
28 any other type of employee benefit plan); select and change  
29 payment options for the principal under any retirement plan;  
30 make rollover contributions from any retirement plan to other  
31 retirement plans or individual retirement accounts; exercise  
32 all investment powers available under any type of self-directed  
33 retirement plan; and, in general, exercise all powers with  
34 respect to retirement plans and retirement plan account

1 balances which the principal could if present and under no  
2 disability.

3 (h) Social Security, unemployment and military service  
4 benefits. The agent is authorized to: prepare, sign and file  
5 any claim or application for Social Security, unemployment or  
6 military service benefits; sue for, settle or abandon any  
7 claims to any benefit or assistance under any federal, state,  
8 local or foreign statute or regulation; control, deposit to any  
9 account, collect, receipt for, and take title to and hold all  
10 benefits under any Social Security, unemployment, military  
11 service or other state, federal, local or foreign statute or  
12 regulation; and, in general, exercise all powers with respect  
13 to Social Security, unemployment, military service and  
14 governmental benefits which the principal could if present and  
15 under no disability.

16 (i) Tax matters. The agent is authorized to: sign, verify  
17 and file all the principal's federal, state and local income,  
18 gift, estate, property and other tax returns, including joint  
19 returns and declarations of estimated tax; pay all taxes;  
20 claim, sue for and receive all tax refunds; examine and copy  
21 all the principal's tax returns and records; represent the  
22 principal before any federal, state or local revenue agency or  
23 taxing body and sign and deliver all tax powers of attorney on  
24 behalf of the principal that may be necessary for such  
25 purposes; waive rights and sign all documents on behalf of the  
26 principal as required to settle, pay and determine all tax  
27 liabilities; and, in general, exercise all powers with respect  
28 to tax matters which the principal could if present and under  
29 no disability.

30 (j) Claims and litigation. The agent is authorized to:  
31 institute, prosecute, defend, abandon, compromise, arbitrate,  
32 settle and dispose of any claim in favor of or against the  
33 principal or any property interests of the principal; collect  
34 and receipt for any claim or settlement proceeds and waive or

1 release all rights of the principal; employ attorneys and  
2 others and enter into contingency agreements and other  
3 contracts as necessary in connection with litigation; and, in  
4 general, exercise all powers with respect to claims and  
5 litigation which the principal could if present and under no  
6 disability.

7 (k) Commodity and option transactions. The agent is  
8 authorized to: buy, sell, exchange, assign, convey, settle and  
9 exercise commodities futures contracts and call and put options  
10 on stocks and stock indices traded on a regulated options  
11 exchange and collect and receipt for all proceeds of any such  
12 transactions; establish or continue option accounts for the  
13 principal with any securities or futures broker; and, in  
14 general, exercise all powers with respect to commodities and  
15 options which the principal could if present and under no  
16 disability.

17 (l) Business operations. The agent is authorized to:  
18 organize or continue and conduct any business (which term  
19 includes, without limitation, any farming, manufacturing,  
20 service, mining, retailing or other type of business operation)  
21 in any form, whether as a proprietorship, joint venture,  
22 partnership, corporation, trust or other legal entity;  
23 operate, buy, sell, expand, contract, terminate or liquidate  
24 any business; direct, control, supervise, manage or  
25 participate in the operation of any business and engage,  
26 compensate and discharge business managers, employees, agents,  
27 attorneys, accountants and consultants; and, in general,  
28 exercise all powers with respect to business interests and  
29 operations which the principal could if present and under no  
30 disability.

31 (m) Borrowing transactions. The agent is authorized to:  
32 borrow money; mortgage or pledge any real estate or tangible or  
33 intangible personal property as security for such purposes;  
34 sign, renew, extend, pay and satisfy any notes or other forms

1 of obligation; and, in general, exercise all powers with  
2 respect to secured and unsecured borrowing which the principal  
3 could if present and under no disability.

4 (n) Estate transactions. The agent is authorized to:  
5 accept, receipt for, exercise, release, reject, renounce,  
6 assign, disclaim, demand, sue for, claim and recover any  
7 legacy, bequest, devise, gift or other property interest or  
8 payment due or payable to or for the principal; assert any  
9 interest in and exercise any power over any trust, estate or  
10 property subject to fiduciary control; establish a revocable  
11 trust solely for the benefit of the principal that terminates  
12 at the death of the principal and is then distributable to the  
13 legal representative of the estate of the principal; and, in  
14 general, exercise all powers with respect to estates and trusts  
15 which the principal could if present and under no disability;  
16 provided, however, that the agent may not make or change a will  
17 and may not revoke or amend a trust revocable or amendable by  
18 the principal or require the trustee of any trust for the  
19 benefit of the principal to pay income or principal to the  
20 agent unless specific authority to that end is given, and  
21 specific reference to the trust is made, in the statutory  
22 property power form.

23 (o) All other property powers and transactions. The agent  
24 is authorized to: exercise all possible powers of the principal  
25 with respect to all possible types of property and interests in  
26 property, except to the extent the principal limits the  
27 generality of this category (o) by striking out one or more of  
28 categories (a) through (n) or by specifying other limitations  
29 in the statutory property power form.

30 (Source: P.A. 85-701.)".