



Sen. Ann Gillespie

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10300SB3421sam002

LRB103 37783 JRC 70210 a

1 AMENDMENT TO SENATE BILL 3421

2 AMENDMENT NO. _____. Amend Senate Bill 3421 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power of Attorney Act is amended
5 by changing Section 2-8 as follows:

6 (755 ILCS 45/2-8) (from Ch. 110 1/2, par. 802-8)

7 Sec. 2-8. Reliance on document purporting to establish an
8 agency.

9 (a) Any person who acts in good faith reliance on a copy of
10 a document purporting to establish an agency will be fully
11 protected and released to the same extent as though the
12 reliant had dealt directly with the named principal as a
13 fully-competent person. The named agent shall furnish an
14 affidavit or Agent's Certification and Acceptance of Authority
15 to the reliant on demand stating that the instrument relied on
16 is a true copy of the agency and that, to the best of the named

1 agent's knowledge, the named principal is alive and the
2 relevant powers of the named agent have not been altered or
3 terminated; but good faith reliance on a document purporting
4 to establish an agency will protect the reliant without the
5 affidavit or Agent's Certification and Acceptance of
6 Authority.

7 (b) Upon request, the named agent in a power of attorney
8 shall furnish an Agent's Certification and Acceptance of
9 Authority to the reliant in substantially the following form:

10 AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

11 I, (insert name of agent), certify that the
12 attached is a true copy of a power of attorney naming the
13 undersigned as agent or successor agent for
14 (insert name of principal).

15 I certify that to the best of my knowledge the principal
16 had the capacity to execute the power of attorney, is alive,
17 and has not revoked the power of attorney; that my powers as
18 agent have not been altered or terminated; and that the power
19 of attorney remains in full force and effect.

20 I accept appointment as agent under this power of
21 attorney.

22 This certification and acceptance is made under penalty of
23 perjury.*

24 Dated:

1
 2 (Agent's Signature)
 3
 4 (Print Agent's Name)
 5
 6 (Agent's Address)

7 * (NOTE: Perjury is defined in Section 32-2 of the Criminal
 8 Code of 2012, and is a Class 3 felony.)

9 (c) Any person dealing with an agent named in a copy of a
 10 document purporting to establish an agency may presume, in the
 11 absence of actual knowledge to the contrary, that the document
 12 purporting to establish the agency was validly executed, that
 13 the agency was validly established, that the named principal
 14 was competent at the time of execution, and that, at the time
 15 of reliance, the named principal is alive, the agency was
 16 validly established and has not terminated or been amended,
 17 the relevant powers of the named agent were properly and
 18 validly granted and have not terminated or been amended, and
 19 the acts of the named agent conform to the standards of this
 20 Act. No person relying on a copy of a document purporting to
 21 establish an agency shall be required to see to the
 22 application of any property delivered to or controlled by the
 23 named agent or to question the authority of the named agent.

24 (d) Each person to whom a direction by the named agent in
 25 accordance with the terms of the copy of the document

1 purporting to establish an agency is communicated shall comply
2 with that direction, and any person who fails to comply
3 arbitrarily or without reasonable cause shall be subject to
4 civil liability for any damages resulting from noncompliance.
5 A health care provider who complies with Section 4-7 shall not
6 be deemed to have acted arbitrarily or without reasonable
7 cause.

8 (e) Unreasonable cause to refuse to honor. It shall be
9 deemed unreasonable for a third party to refuse to honor an
10 Illinois statutory short form power of attorney for property
11 properly executed in accordance with the laws in effect at the
12 time of its execution, if the only reason for the refusal is
13 any of or more than one of the following: (1) the power of
14 attorney is not on a form the third party receiving such power
15 prescribes, regardless of any form the terms of any account
16 agreement between the principal and third party requires; (2)
17 there has been a lapse of time since the execution of the power
18 of attorney; (3) on the face of the statutory short form power
19 of attorney, there is a lapse of time between the date of
20 acknowledgment of the signature of the principal and the date
21 of the acceptance by the agent; (4) the document provided does
22 not bear an original signature, original witness, or original
23 notarization but is accompanied by a properly executed Agent's
24 Certification and Acceptance of Authority, Successor Agent's
25 Certification and Acceptance of Authority, or Co-Agent's
26 Certification and Acceptance of Authority bearing the original

1 signature of the named agent; or (5) the document appoints an
2 entity as the agent. Nothing in this Section shall be
3 interpreted as prohibiting or limiting a third party from
4 requiring the named agent to furnish a properly executed
5 Agent's Certification and Acceptance of Authority, Successor
6 Agent's Certification and Acceptance of Authority, or
7 Co-Agent's Certification and Acceptance of Authority under
8 this Act.

9 (f) Reasonable cause to refuse to honor. Reasons for which
10 it shall be deemed reasonable cause for a third party to refuse
11 to honor a power of attorney for property include, but are not
12 limited to, the following:

13 (1) the refusal by the agent to provide an affidavit
14 or properly executed Agent's Certification and Acceptance
15 of Authority, Successor Agent's Certification and
16 Acceptance of Authority, or Co-Agent's Certification and
17 Acceptance of Authority;

18 (2) the refusal by the agent to provide a copy of the
19 original document that is certified to be valid by an
20 attorney, a court order, or governmental entity;

21 (3) the person's good faith referral of the principal
22 and the agent or a person acting for or with the agent to
23 the local adult protective services unit;

24 (4) actual knowledge or a reasonable basis for
25 believing in the existence of a report having been made by
26 any person to the local adult protective services unit

1 alleging physical or financial abuse, neglect,
2 exploitation, or abandonment of the principal by the agent
3 or a person acting for the agent;

4 (5) actual knowledge of the principal's death or a
5 reasonable basis for believing the principal has died;

6 (6) actual knowledge of the incapacity of the
7 principal or a reasonable basis for believing the
8 principal is incapacitated if the power of attorney
9 tendered is a nondurable power of attorney;

10 (7) actual knowledge or a reasonable basis for
11 believing that the principal was incapacitated at the time
12 the power of attorney was executed;

13 (8) actual knowledge or a reasonable basis for
14 believing: (A) the power of attorney was procured through
15 fraud, duress, or undue influence, or (B) the agent is
16 engaged in fraud or abuse of the principal;

17 (9) actual notice of the termination or revocation of
18 the power of attorney or a reasonable basis for believing
19 that the power of attorney has been terminated or revoked;

20 (10) the refusal by a title insurance company to
21 underwrite title insurance for a gift of real property
22 made pursuant to a statutory short form power of attorney
23 that does not contain express instructions or purposes of
24 the principal with respect to gifts in paragraph 3 of the
25 statutory short form power of attorney;

26 (11) the refusal of the principal's attorney to

1 provide a certificate that the power of attorney is valid;

2 (12) a missing or incorrect signature, an invalid
3 notarization, or an unacceptable power of attorney
4 identification;

5 (13) the third party: (A) has filed a suspicious
6 activity report as described by 31 U.S.C. 5318(g) with
7 respect to the principal or agent; (B) believes in good
8 faith that the principal or agent has a prior criminal
9 history involving financial crimes; or (C) has had a
10 previous, unsatisfactory business relationship with the
11 agent due to or resulting in material loss to the third
12 party, financial mismanagement by the agent, or litigation
13 between the third party and the agent alleging substantial
14 damages; or

15 (14) the third party has reasonable cause to suspect
16 the abuse, abandonment, neglect, or financial exploitation
17 of the principal, if the principal is an eligible adult
18 under the Adult Protective Services Act.

19 (Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)".