

By: _____

No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to durable powers of attorney.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 751.002, Estates Code, is amended to
5 read as follows:

6 Sec. 751.002. Definitions. In this subtitle:

7 (1) "Actual knowledge" means the knowledge of a
8 person without that person making any due inquiry, and without
9 any imputed knowledge, except as expressly set forth in Section
10 751.211(c).

11 (2) "Affiliate" means a business entity that directly
12 or indirectly controls, is controlled by, or is under common
13 control with another business entity.

14 (3) "Agent" includes:

15 (A) an attorney in fact; and

16 (B) a co-agent, successor agent, or successor
17 co-agent.

18 (4) "Durable power of attorney" means a writing or
19 other record that complies with the requirements of Section
20 751.0021(a) or is described by Section 751.0021(b).

21 (5) "Principal" means an adult ~~person~~ individual who

1 signs or directs the signing of the ~~person~~individual's name on
2 a power of attorney that designates an agent to act on the
3 ~~person~~individual's behalf.

4 (6) "Record" means information that is inscribed on a
5 tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form.

7 SECTION 2. Section 752.107, Estates Code, is amended to
8 read as follows:

9 Sec. 752.107. BUSINESS OPERATION TRANSACTIONS. Subject to
10 the terms of a document or an agreement governing an entity or
11 an entity ownership interest, to the extent the agent is
12 permitted by law to act for the principal, and unless a power of
13 attorney otherwise provides, ~~The language conferring authority~~
14 with respect to business operating transactions in a statutory
15 durable power of attorney empowers the ~~attorney in fact or agent~~
16 to:

17 (1) operate, buy, sell, enlarge, reduce, or terminate
18 ~~a business~~ an ownership interest;

19 (2) ~~do the following, to the extent that an attorney~~
20 ~~in fact or agent is permitted by law to act for a principal and~~
21 ~~subject to the terms of a partnership agreement:~~

22 ~~—————(A) perform a duty, or discharge a liability, or~~

1 and exercise in person or by proxy a right, power, privilege, or
2 option that the principal has, may have, or claims to have ~~under~~
3 ~~the partnership agreement, whether or not the principal is a~~
4 ~~general or limited partner;~~

5 (3) (B) enforce the terms of the partnership a document
6 or an agreement governing an entity or an entity ownership
7 interest or relating to an ownership interest ~~agreement by~~
8 ~~litigation, action, or otherwise;~~

9 (4) ~~(C)~~ defend, submit to arbitration, settle, or
10 compromise litigation or an action to which the principal is a
11 party because of ~~membership in the partnership~~ an ownership
12 interest;

13 (35) exercise in person or by proxy, or enforce by
14 litigation, action, or otherwise, a right, power, privilege, or
15 option the principal has or claims to have as the holder of a
16 certificated or uncertificated ownership interest ~~share~~, or other
17 similar instrument; and

18 (6) defend, submit to ~~arbitration~~ alternative dispute
19 resolution, settle, or compromise a ~~legal proceeding~~ litigation
20 to which the principal is a party ~~because of~~ concerning a bond,
21 certificated or uncertificated ownership interest ~~share~~, or
22 similar instrument;

1 (47) with respect to an entity or business owned
2 solely by the principal:

3 (A) continue, modify, renegotiate, extend, and
4 terminate a contract made by or on behalf of the principal with
5 respect to the entity or business ~~before execution of the power~~
6 ~~of attorney with an individual, legal entity, firm, association,~~
7 ~~or corporation by or on behalf of the principal with respect to~~
8 ~~the business;~~

9 (B) determine:

10 (i) the location of ~~the business's~~ its
11 operation;

12 (ii) the nature and extent of the business;

13 (iii) the methods of manufacturing, selling,
14 merchandising, financing, accounting, and advertising employed
15 ~~in the business's~~ its operation;

16 (iv) the amount and types of insurance
17 carried; and

18 (v) the method of engaging, compensating, and
19 dealing with ~~the business's~~ its employees and accountants,
20 attorneys, ~~and or~~ other agents and employees;

21 (C) change the name or form of organization under
22 which the entity or business is operated and enter into a

1 ~~partnership~~ an agreement with other persons ~~or organize a~~
2 ~~corporation~~ to take over all or part of the operation of the
3 entity or business; and

4 (D) demand and receive money due or claimed by the
5 principal or on the principal's behalf in the operation of the
6 entity or business and control and disburse the money in the
7 operation of the entity or business;

8 (58) put additional capital into an entity or business
9 in which the principal has an interest;

10 (69) join in a plan of reorganization, consolidation,
11 interest exchange, conversion, or merger of the entity or
12 business;

13 (710) sell or liquidate an entity or business or all
14 or part of the assets of the entity or business ~~at the time and~~
15 ~~on the terms that the attorney in fact or agent considers~~
16 ~~desirable~~;

17 (811) establish the value of an entity or business
18 under a buy-out agreement to which the principal is a party;

19 (912) ~~do the following~~:

20 ~~—————(A)—————~~ prepare, sign, file, and deliver reports,
21 compilations of information, returns, or other papers with
22 respect to an entity or business;

1 ~~_____ (i) that are required by a governmental~~
2 ~~agency, department, or instrumentality; or~~

3 ~~_____ (ii) that the attorney in fact or agent~~
4 ~~considers desirable; and~~

5 ~~_____ (B) and make related payments; and~~

6 (103) pay, compromise, or contest taxes or assessments
7 and perform any other act ~~that the attorney in fact or agent~~
8 ~~considers desirable~~ to protect the principal from illegal or
9 unnecessary taxation, fines, penalties, or assessments with
10 respect to an entity or business, including attempts to recover,
11 in any manner permitted by law, money paid before or after the
12 execution of the power of attorney.

13 SECTION 3. (a) Except as otherwise provided by this Act,
14 this Act applies to a durable power of attorney, including a
15 statutory durable power of attorney, created before, on, or
16 after the effective date of this Act.

17 (b) Section 752.107, Estates Code, as amended by this
18 Act, applies only to a durable power of attorney, including a
19 statutory durable power of attorney, executed on or after the
20 effective date of this Act.

21 (c) A durable power of attorney, including a statutory
22 durable power of attorney, executed before the effective date of

1 this Act is governed by the provision specified in Subsection
2 (b) of this section as that provision existed on the date the
3 durable power of attorney was executed, and the former law is
4 continued in effect for that purpose.

5 SECTION 4. This Act takes effect September 1, 2021.