

HOUSE BILL NO. 6264

December 10, 2024, Introduced by Reps. Wozniak, Borton and MacDonell and referred to the Committee on Families, Children and Seniors.

A bill to amend 2023 PA 187, entitled
"Uniform power of attorney act,"
by amending sections 102 and 105 (MCL 556.202 and 556.205).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 102. As used in this act:
- 2 (a) "Actual knowledge" means knowledge in fact.
- 3 (b) "Agent" means a person granted authority to act for a
- 4 principal under a power of attorney, whether denominated an agent,
- 5 attorney-in-fact, or otherwise. Agent includes an original agent, a
- 6 coagent, a successor agent, and a person to whom an agent's

1 authority is delegated.

2 (c) "Court" includes that term as defined in section 1103 of
3 the estates and protected individuals code, 1998 PA 386, MCL
4 700.1103.

5 (d) "Durable", with respect to a power of attorney, means not
6 terminated by the principal's incapacity.

7 (e) "Electronic" means relating to technology having
8 electrical, digital, magnetic, wireless, optical, electromagnetic,
9 or similar capabilities.

10 (f) "Entity" means a person other than an individual.

11 (g) "General power of appointment" means general power as that
12 term is defined in section 2 of the powers of appointment act of
13 1967, 1967 PA 224, MCL 556.112.

14 (h) "Good faith" means honesty in fact.

15 (i) "Incapacity" means inability of an individual to manage
16 property or business affairs for either of the following reasons:

17 (i) The individual has an impairment in the ability to receive
18 and evaluate information or make or communicate decisions even with
19 the use of technological assistance.

20 (ii) The individual is any of the following:

21 (A) Missing.

22 (B) Detained, including incarcerated in a penal system.

23 (C) Outside the United States and unable to return.

24 (j) **"Notary public" means a notary public who observes a**
25 **person signing or acknowledging an instrument in accordance with**
26 **the Michigan law on notarial acts, 2003 PA 238, MCL 55.261 to**
27 **55.315.**

28 (k) ~~(j)~~ "Person" means an individual or corporation, including
29 a fiduciary of an estate or trust, a business trust, partnership,

1 limited liability company, association, joint venture, public
 2 corporation, government or governmental subdivision, agency, or
 3 instrumentality, or any other legal or commercial entity.

4 (l) ~~(k)~~ Unless the context requires otherwise, "power" means a
 5 power of attorney.

6 (m) ~~(l)~~ "Power of attorney" means a written record that grants
 7 authority to an agent to act in 1 or more matters on behalf of the
 8 principal, whether or not the term power of attorney is used.

9 (n) ~~(m)~~ "Presented for acceptance", with respect to a power of
 10 attorney, means that both of the following events have occurred:

11 (i) A person other than the principal or an agent under the
 12 power in question has been asked by the principal or an agent under
 13 the power to take a specified action or actions in reliance on the
 14 power.

15 (ii) The power of attorney itself or a copy of it has been
 16 presented to and received by the person that is asked to take
 17 action in reliance on the power as described in subparagraph (i).

18 (o) ~~(n)~~ "Presently exercisable", with respect to a power of
 19 appointment, means that the power of appointment is exercisable by
 20 the appointee at the relevant time. A power of appointment that is
 21 not exercisable until the occurrence of a specified event, the
 22 satisfaction of an ascertainable standard, or the passage of a
 23 specified period is presently exercisable only after the occurrence
 24 of the specified event, the satisfaction of the ascertainable
 25 standard, or the passage of the specified period. A power that is
 26 exercisable only by will is not presently exercisable.

27 (p) ~~(o)~~ "Principal" means an individual who grants authority
 28 to an agent in a power of attorney.

29 (q) ~~(p)~~ "Property" means anything that may be the subject of

ownership, whether real or personal, or legal or equitable, or any interest or right in such a thing.

(r) ~~(q)~~—"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(s) ~~(r)~~—"Sign" means to do either of the following with the intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

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

(t) ~~(s)~~—"State" means 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.

(u) ~~(t)~~—"Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. Stocks and bonds does not include commodity futures contracts or call or put options on stocks or stock indexes.

Sec. 105. (1) To be effective, a power of attorney created ~~on~~ ~~or after the effective date of this act~~ **June 30, 2024** must be signed by 1 of the following individuals:

(a) The principal.

(b) If signed in the principal's conscious presence, another individual directed by the principal to sign the principal's name.

(2) To be durable, a power of attorney signed under subsection (1)(a) must meet 1 of the following requirements:

(a) Be acknowledged by the principal before a notary public or other individual authorized to take acknowledgments.

1 (b) Be signed in the presence of 2 witnesses, both of whom
2 also sign the power, subject to both of the following:

3 (i) A witness may not be an agent nominated in the power.

4 (ii) One of the witnesses may be an individual who also acts,
5 in the principal's execution of the power, as a notary public or
6 other individual authorized to take acknowledgments.

7 (3) To be durable, a power of attorney signed under subsection
8 (1)(b) must be signed in the presence of 2 witnesses as described
9 in subsection (2)(b), regardless of whether the power is
10 acknowledged.

11 (4) A signature on a power of attorney is presumed to be
12 genuine if the principal acknowledges the signature before a notary
13 public or other individual authorized by law to take
14 acknowledgments.

15 (5) A signature on a power of attorney that is witnessed as
16 described in subsection (2)(b) but is not acknowledged by the
17 principal before a notary public or other individual authorized by
18 law to take acknowledgments is not entitled to the presumption of
19 genuineness under subsection (4), and the power is not acknowledged
20 within the meaning of sections 119 and 120.

21 **(6) The act of signing or witnessing the execution of a power**
22 **of attorney under this act is satisfied by use of a 2-way real-time**
23 **audiovisual technology if all of the following requirements are**
24 **met:**

25 **(a) The 2-way real-time audiovisual technology must allow**
26 **direct, contemporaneous interaction by sight and sound between the**
27 **signatory and the witnesses.**

28 **(b) The interaction between the signatory and the witnesses**
29 **must be recorded and preserved by the signatory or the signatory's**

1 designee for a period of at least 3 years.

2 (c) The signatory must affirmatively represent either that the
3 signatory is physically situated in this state, or that the
4 signatory is physically located outside the geographic boundaries
5 of this state and that either of the following applies:

6 (i) The power of attorney is intended for filing with or
7 relates to a matter before a court, governmental entity, public
8 official, or other entity subject to the jurisdiction of this
9 state.

10 (ii) The power of attorney involves property located in the
11 territorial jurisdiction of this state or a transaction
12 substantially connected to this state.

13 (d) The signatory must affirmatively state during the
14 signatory's interaction with the witnesses on the 2-way real-time
15 audiovisual technology what document the witnesses are executing.

16 (e) Each title page and signature page of the power of
17 attorney being witnessed must be shown to the witnesses on the 2-
18 way real-time audiovisual technology in a manner clearly legible to
19 the witnesses, and every page of the power of attorney must be
20 numbered to reflect both the page number of the power of attorney
21 and the total number of pages of the power of attorney.

22 (f) Each act of signing the power of attorney must be captured
23 sufficiently up close on the 2-way real-time audiovisual technology
24 for the witnesses to observe.

25 (g) The signatory or the signatory's designee must transmit by
26 facsimile, mail, or electronic means a legible copy of the entire
27 signed power of attorney directly to the witnesses within 72 hours
28 after it is executed.

29 (h) Within 72 hours after receipt, the witnesses must sign the

1 transmitted copy of the power of attorney as a witness and return
2 the signed copy of the power of attorney to the signatory or the
3 signatory's designee by facsimile, mail, or electronic means.

4 (i) The power of attorney is either of the following:

5 (i) In writing.

6 (ii) A record that is readable as text at the time of signing.