

By: Moody

H.B. No. 2183

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to durable powers of attorney and the construction of  
3 certain powers conferred in those powers of attorney.

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

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

7 (5) "Principal" means an adult individual [~~person~~] who  
8 signs or directs the signing of the individual's [~~person's~~] name on  
9 a power of attorney that designates an agent to act on the  
10 individual's [~~person's~~] behalf.

11 SECTION 2. Section 751.00201, Estates Code, is amended to  
12 read as follows:

13 Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR  
14 PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by  
15 a durable power of attorney, an individual [~~a person~~] is considered  
16 disabled or incapacitated for purposes of the durable power of  
17 attorney if a physician certifies in writing at a date later than  
18 the date the durable power of attorney is executed that, based on  
19 the physician's medical examination of the individual [~~person~~], the  
20 individual [~~person~~] is determined to be mentally incapable of  
21 managing the individual's [~~person's~~] financial affairs.

22 SECTION 3. Section 752.001(a), Estates Code, is amended to  
23 read as follows:

24 (a) An individual [~~A person~~] may use a statutory durable

1 power of attorney to grant an ~~[attorney in fact or]~~ agent powers  
2 with respect to an individual's ~~[a person's]~~ property and financial  
3 matters.

4 SECTION 4. Section 752.107, Estates Code, is amended to  
5 read as follows:

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

14 (1) operate, buy, sell, enlarge, reduce, or terminate  
15 an ownership ~~[a business]~~ interest;

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

19 ~~[(A)]~~ perform a duty or ~~[r]~~ discharge a liability,  
20 or exercise in person or by proxy a right, power, privilege, or  
21 option that the principal has, may have, or claims to have ~~[under~~  
22 ~~the partnership agreement, whether or not the principal is a~~  
23 ~~general or limited partner]~~;

24 (3) ~~[(B)]~~ enforce the terms of an agreement or other  
25 document governing or relating to an entity or entity ownership  
26 interest ~~[the partnership agreement by litigation, action, or~~  
27 ~~otherwise]; [and]~~

1           (4) [~~(C)~~] defend, submit to arbitration, settle, or  
2 compromise litigation or an action to which the principal is a party  
3 because of an entity ownership interest [~~membership in the~~  
4 ~~partnership~~];

5           (5) [~~(3)~~] exercise in person or by proxy, or enforce  
6 by litigation, action, or otherwise, a right, power, privilege, or  
7 option the principal has or claims to have as the holder of a  
8 certificated or uncertificated ownership interest;

9           (6) [~~bond, share, or other similar instrument and~~]  
10 defend, submit to alternative dispute resolution [~~arbitration~~],  
11 settle, or compromise litigation [~~a legal proceeding~~] to which the  
12 principal is a party concerning a certificated or uncertificated  
13 ownership interest [~~because of a bond, share, or similar~~  
14 ~~instrument~~];

15           (7) [~~(4)~~] with respect to a business or other entity  
16 owned solely by the principal:

17                   (A) continue, modify, renegotiate, extend, and  
18 terminate a contract made by or on behalf of the principal with  
19 respect to the business or other entity [~~before execution of the~~  
20 ~~power of attorney with an individual, legal entity, firm,~~  
21 ~~association, or corporation by or on behalf of the principal with~~  
22 ~~respect to the business~~];

23                   (B) determine:

24                           (i) the location of the business's or other  
25 entity's operation;

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

27                           (iii) the methods of manufacturing,

1 selling, merchandising, financing, accounting, and advertising  
2 employed in the business's or other entity's operation;

3 (iv) the amount and types of insurance  
4 carried; and

5 (v) the method of engaging, compensating,  
6 and dealing with the business's or other entity's accountants,  
7 attorneys, or ~~[and]~~ other agents ~~[and employees]~~;

8 (C) change the name or form of organization under  
9 which the business or other entity is operated and enter into an ~~[a~~  
10 ~~partnership]~~ agreement with other persons ~~[or organize a~~  
11 ~~corporation]~~ to take over all or part of the operation of the  
12 business or other entity; and

13 (D) demand and receive money due or claimed by  
14 the principal or on the principal's behalf in the operation of the  
15 business or other entity and control and disburse the money in the  
16 operation of the business or other entity;

17 (8) ~~[(5)]~~ put additional capital into a business or  
18 other entity in which the principal has an interest;

19 (9) ~~[(6)]~~ join in a plan of reorganization,  
20 consolidation, interest exchange, conversion, or merger of the  
21 business or other entity;

22 (10) ~~[(7)]~~ sell or liquidate a business or other  
23 entity or all or part of the assets of the business or other entity  
24 ~~[at the time and on the terms that the attorney in fact or agent~~  
25 ~~considers desirable]~~;

26 (11) ~~[(8)]~~ establish the value of a business or other  
27 entity under a buy-out agreement to which the principal is a party;

1           (12) [~~(9)~~] ~~do the following:~~

2                   [~~(A)~~] prepare, sign, file, and deliver reports,  
3 compilations of information, returns, or other papers with respect  
4 to a business or other entity and~~+~~

5                               [~~(i)~~] ~~that are required by a governmental~~  
6 ~~agency, department, or instrumentality; or~~

7                               [~~(ii)~~] ~~that the attorney in fact or agent~~  
8 ~~considers desirable; and~~

9                   [~~(B)~~] make related payments; and

10           (13) [~~(10)~~] pay, compromise, or contest taxes or  
11 assessments and perform any other act [~~that the attorney in fact or~~  
12 ~~agent considers desirable~~] to protect the principal from illegal or  
13 unnecessary taxation, fines, penalties, or assessments with  
14 respect to a business or other entity, including attempts to  
15 recover, in any manner permitted by law, money paid before or after  
16 the execution of the power of attorney.

17           SECTION 5. Section 752.107, Estates Code, as amended by  
18 this 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. A durable power of attorney, including a  
21 statutory durable power of attorney, executed before the effective  
22 date of this Act is governed by the law in effect on the date the  
23 durable power of attorney was executed, and the former law is  
24 continued in effect for that purpose.

25           SECTION 6. This Act takes effect September 1, 2021.